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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1882.

No. ~~228.~~ 22

THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY (AS REORGANIZED) APPELLANT,

vs.

THE SOUTHERN EXPRESS COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED JULY 14, 1882.

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SUPREME COURT OF THE UNITED STATES.

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THE SOUTHERN EXPRESS COMPANY.

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INDEX.

	Original.	Print.
Caption	a	1
Bill of complaint	1	1
Order to show cause	17	11
Answer to bill	19	12
Replication	28	17
Supplemental bill	29	17
Answer to supplemental bill	42	24
Stipulation as to conduct of the cause, &c.	62	35
Stipulation as to facts, &c.	65	35
Memorandum of an agreement between Southern Express Co. and M. & L. R. R. R., May 26, 1871	69	37
Letter of A. S. Livermore, Gen'l Supt., to M. J. O'Brien, Gen'l Supt., Southern Ex. Co., Jan. 14, 1874	70	39
Receipt blank of Southern Express Co.	71	39
Receipt Blank of M. & L. R. R. R. Co. Express	73	41
Motion to dissolve injunction	76	42
Order modifying injunction, &c.	76	42
Decree	78	42
Clerk's certificate	85	44
Writ of certiorari from Supreme Court U. S.	86	45

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	Original.	Print.
Transcript returned with certiorari	89	45
Caption	89	46
Bill of complaint	90	46
Order to show cause	109	57
Injunction	111	58
Marshal's return	113	59
Order for injunction	115	59
Answer to bill	116	59
Stipulation as to conduct of the cause, &c.	132	65
Replication	135	65
Motion to dissolve injunction	137	66
Supplemental bill of complaint	139	67
Answer to supplemental bill	160	74
Order setting cause for hearing on motions	196	76
Order modifying injunction	197	85
Decree	199	86
Bond of Southern Express Co.	208	88
Order approving bond	216	91
Order sustaining injunction bond	216	91
Petition for reference to master	217	92
Order referring cause to master	223	94
Exhibits on final hearing	228	95
Exhibit —Mileage tariff for M. & L. R. R. Express	229	95
3—Statement of express charges of M. &. L. R. R. Express and Southern Express Co.	230	96
4—Letter of James Aiken, Supt. I. M. & M. &. L. R. Ex. to E. J. Butler, March 3, 1881	232	98
5—Letter of James Aiken, Supt. I. M. & M. & L. R. Ex. to E. J. Butler, April 16, 1881	233	98
Exhibit—Stipulation as to facts	234	98
Memorandum of agreement between Southern Ex. Co. &. M. & L. R. R. Co., May 26, 1871	240	101
Letter of A. S. Livermore, Gen'l Supt. to M. J. O'Brien, Gen'l Supt, Jan. 14, 1874	244	102
Exhibit—Basis of tariff	245	102
—Tables of classification	253	106
Opinion	255	110
Order admitting certain depositions	267	113
Deposition of James G. Fargo	268	114
James M. Thompson	270	114
M. J. O'Brien	271	115
Clerk's certificate	274	115

a Circuit Court of the United States, Eastern District of Arkansas.

THE SOUTHERN EXPRESS COMPANY, Complainant,
vs.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY (as reorganized), Defendant.

Transcript.

1 In the Circuit Court of the United States for the Eastern District of Arkansas.

To the judges of the circuit court of the United States for the eastern district of Arkansas:

The Southern Express Company, a corporation and citizen of the State of Georgia, brings this, its bill, against the Memphis and Little Rock Railroad Company as reorganized, a corporation and citizen of the State of Arkansas.

I. And, thereupon, your orator, the said Southern Express Company, complains, and says:

Your orator, The Southern Express Company, is a corporation duly created, organized, and now existing under the laws of the State of Georgia, for the purpose, and with the powers necessary thereto, of receiving and forwarding upon railroads, steam vessels, and other vehicles of rapid transportation, in a safe and secure manner, and with the greatest practical expedition in the special care and custody of its own employés, and at destination personally delivering packages of money or currency, gold and silver bullion, bonds, bank notes, deeds, and other valuable papers, jewels, silks, laces, and other articles of great value, requiring for their
2 security extraordinary care and precaution, and also parcels of goods, wares, and merchandise, requiring great dispatch or careful handling, and also fuit, vegetables, fresh meats, fish, oysters, fish spawn, and other articles liable to decay or other injury from delay; and also live animals requiring particular care and attention during transportation; and also for receiving and forwarding for collection bills, notes, drafts, and accounts, and receiving and returning payment thereof; and also for receiving and forwarding all articles of trade and commerce, with the bills and charges of the shipper thereto attached, to be collected of the consignee on delivery of such articles, and returned to shipper; and in so doing to afford the public, under a single contract, and on assured responsibility, safe, reliable, and speedy transportation from and to all points accessible only over two or more railroads, and generally to perform for the public all offices that by usage are incident to the class of carriers now well known, recognized and designated by the public as "express carriers."

II. Your orator would further show that railroad companies, by reason of the limited extent of their lines and powers, and the extraordinary care and attention demanded, and the peculiar and immense hazard, and other difficulties and embarrassments incident thereto, were not only unwilling but unable to perform for the public this

kind of transportation and service in a manner as efficient and with as responsible assurance of safety and despatch, as the necessities and convenience of the public demand, but, by usage, have surrendered the same to be performed by express companies, organized and equipped especially therefor, and by long custom and usage, as well as in respect to their lawful right thereto, have accorded to express companies for a reasonable compensation the means and facilities upon their lines for doing this kind of transportation.

3 III. The express business first organized in the United States about the year 1839, between Boston and New York, has grown to such dimensions that, extending now over all of the States of the Union and Canadas, and to Europe and the West Indies, it is carried on by over one hundred and sixty different express organizations, meeting the requirements of the public in the localities in which such business is transacted, and occupying therefor, without molestation, and with the free permission of the railway companies, nearly every prominent railway line in the United States. Such express companies have, in the aggregate, as your orator is informed and believes, an investment in capital and equipment, of over $30,000,000, and such amount, as your orator is also informed and believes, and therefore avers, is not incumbered by mortgage or other liens, and constitutes, at all times, a fund amply sufficient to secure the public against any probable loss of its property while in the custody of the express companies, and which security is not afforded, as your orator is informed and believes, by any railway company in the United States.

IV. All of said express companies, as your orator is informed and believes, have invested their capital and built up their business upon the express understanding with the railway companies that they would voluntarily afford all the facilities needed by the express companies as the representatives of the public for the transaction of its business, or upon the knowledge and belief that the public, whether demanding such facilities in its individual capacity, or through the express companies as its representative, had a legal right to compel the granting thereof by those who had been created by the public and for the public. No railroad company in the United States, to the knowledge of your orator, has ever refused to transport express matter for the public upon the application of some express company, or some form of legal constitution.

4 Every railway company, so far as your orator is advised, has recognized the right of the public to demand transportation by the railway facilities which the public has permitted to be created of that class of matter which is known as express matter, and no railway company, to the knowledge of your orator, has ever had the ability to assume, as between itself and the public, such obligations for the transportation of such matter as are universally assumed by the express companies toward all who treat them with frankness.

V. The principal public demand for the existence and use of an express company has been as a medium of exchange of money and the collection of negotiable securities, and the transportation of ex-

press packages of greater or less value, or of packages, the prices or value of which was to be collected from the consignee at the time of delivery, and remitted to the consignor.

VI. The public has always demanded in the transaction of its business of this character an undoubted financial responsibility on the part of the carrier, known integrity on the part of the employés, and the invention and application of all moral and mechanical safeguards which ingenuity and experience could devise or suggest. It has also required instrumentalities for the primary collection and subsequent delivery of express matter, for the relief of the public generally in that regard. This demand has been made with full knowledge on the part of the public of the capacity and responsibility of existing railroad, steamboat, and stage companies, and was, and always has been, a demand for facilities and security, which those companies did not afford.

VII. The Government of the United States, as the representative of the public, has, for the reasons aforesaid, availed itself of the facilities and security afforded by the express companies to an extent sometimes larger and almost always equaling the demands
5 of the general public. The laws of the United States now in force permit the use of the mails for the transportation of moneys and of many articles which are known as express matter, at what are called "third-class rates," and the railway companies of the country, unless forbidden by their charters, have also instrumentalities for the transportation of moneys and securities from point to point; but neither the Government of the United States nor the public generally, have ever used to any appreciable extent, either the mail or railway facilities for the transmission of such moneys and securities. The express companies have been created by the public as their instrumentalities for the transmission as well of public as of private moneys, as aforesaid, and the necessity for the existence of such instrumentalities is as great as the necessity for the existence of the ordinary vehicles of commercial intercourse.

VIII. In receiving, transmitting, and delivering express matter for the public, the express companies act as the agents of the public, giving that attention to the collection, transmission, and delivery thereof, which neither the public nor the railway companies can give.

IX. Before the commencement of hostilities in the late civil war, the Adams Express Company, a joint stock association, under the laws of the State of York, was engaged in carrying on the express business in all the Southern States, and upon all the principal railroads therein, and was then possessed of a large and valuable equipment necessary for the conduct thereof, and had created and built up for itself a valuable business therein, and had possessed and enjoyed the good will of the public in respect thereto. For controlling reasons of a public character, then generally known, the said Adams Express Company was compelled to withdraw from the said Southern territory, and it thereupon, on or about the 1st month of July,
6 1861, sold and transferred to your orator, the Southern Express Company, its said equipment, business, and good-will in the several Southern States, to wit, in Virginia, North

Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, and a portion of Tennessee. And thereafter such business was, in the said several States, owned, possessed, enjoyed, and carried on by the said Southern Express Company, in the like manner as the same had been theretofore conducted by the said Adams Express Company.

X. For the use of the equipment and enjoyment of the good will aforesaid, the said Southern Express Company, in the conduct of its said business, was afforded all the facilities necessary therefor, by all the principal railways in said States, over which the business of the public required the said Southern Express Company to extend its lines. And from time to time the Southern Express Company enlarged and extended its aforesaid business upon and along the lines of the several railroads thereafter built in the territory aforesaid; and for the dispatch of its business so extended, provided at great expense, skillful and faithful servants, safes and packing chests, peculiarily suited to the safe transportation and storage of money and valuable packages, wagons, horses, and trucks for collecting, transferring, and making delivery of express matter, and erected at various railroad stations permanent offices and warerooms, and established lines of rapid communication, and fixed and published tariffs of charges between all accessible points in said Southern States. And thence, hitherto having conducted said business for a period of nearly twenty years, it has, at great expense of money and energy, built up in said territory, and now owns and enjoys therein an express business of great value, and by its faithfulness to, and zeal for the interest of the public, and by the fairness and promptness with which it has performed its obligations, and by the reasonableness of the charges it has always made, it has earned and now enjoys an enviable and widely-advertised reputation for responsibility
7 and promptness, and has secured the confidence of the public, and thereby a good-will and commercial standing of great and inestimable value to your orator in the business aforesaid; and all of which constitutes its property.

XI. Your orator would further show that the defendant is a corporation created under the laws of the State of Arkansas for the purpose of owning and operating, and does now own and operate, as a common carrier for the public, between the city of Little Rock and a point on the Mississippi river opposite Memphis, Tennessee, a railroad, in the construction of which the defendant was largely aided by munificent public grants and powers in deeding the power to exercise the right of eminent domain.

XII. Your orator would further show that said defendant, the Memphis and Little Rock Railroad Company, as reorganized, is duly equipped with light, durable cars, especially constructed and intended to be attached to their passenger trains, and used for the transportation of express freights, and express messengers in charge thereof, and is also equipped with all other means and facilities necessary to your orator for carrying on its express business as aforesaid; and since its construction has heretofore continuously afforded to your orator, as one of the public engaged in the express business,

the means and facilities of conducting its business over its railroad in the manner required for the convenience and safety of your orator's business, and established by the usage of railroad and express companies in like cases.

XIII. For the transportation of its express matter over the lines of the defendant, the Southern Express Company has paid the defendant the sum of $55,115.88 for the years from 1871 to date, inclusive, of which a large proportion was paid to said railway company for the transportation of express matter not local for the defendant's line, but going to or coming from points beyond
8 the termini of defendant's railroad, and mostly to or from other States of the Union.

XIV. Relying upon the duty and obligations imposed upon said railway company by law and the conditions of its enjoyments of its franchises, as well as by the contract aforesaid, to always afford to your orator for a reasonable compensation equal and indiscriminate opportunities and facilities of transportation of the kind, and to be enjoyed in the manner demanded by the convenience and necessities of the public and established by the usage and custom of said railroad company, and all other railroad companies in like cases, your orator made large investments of money in building up its business at said stations and along and upon said railroad, and in establishing other and connecting routes for business to be transported beyond the lines of said railroad, and in advertising the same to the public, and by such investments, and its energies expended through a long time, to secure to the public the facilities of safe and rapid dispatch to any and all places, and to itself the confidence and patronage of the public, it has built up and now owns and enjoys an express business and prestige and good-will thereto upon said line of great value to your orator, by reason of the tolls and profits thereby accruing to your orator.

XV. Being thus organized and established in the said Southern States after the close of the war, the Southern Express Company entered into an arrangement, now in force with the Adams Express Company, for the general regulation of the transportation of property coming from the territory of the one into the territory of the other, and by which property received by the Adams Express Company, destined for points within the territory of the Southern, and property received within the territory of the Southern destined to points within territory of Adams Express Company, or reached by its connections, is interchanged at certain specified points, and
9 upon a basis of charge proportioned to the distance traversed in the territory of either. In case of such interchange of express matter within such territory, the express company originally receiving the same remains liable to the public for the value thereof until delivered to the consignee.

XVI. Since the said understanding and arrangement, the Southern Express Company has made such interchanges with the said Adams Express Company, and now makes the same, at Richmond, Lynchburg, and Norfolk, Virginia; Chattanooga, Tennessee; Cairo, Illinois; Paducah, Kentucky; and St. Louis, Missouri; and has not

itself, since then, either delivered or received express matter north of such points, but the territory south thereof has been operated by the said Southern Express Company alone.

XVII. By this arrangement the said express companies have been enabled to extend to the public the advantages and facilities of a continuous and most speedy line of transportation for express matter through the several States in which the said companies carry on their business, and, by the aid of other responsible express companies throughout the entire United States, under a single bill of lading, assuring the safe delivery of such express matter over all the connecting lines upon which it is carried to its destination.

XVIII. The said Southern Express Company now owns and controls an express business properly and most expeditiously to be conducted over the said defendant's railway sufficient to guarantee to the said defendant tolls or earnings in the future as great or greater than those heretofore paid it as aforesaid, to the like pecuniary benefit of the defendant, as it has heretofore received.

XIX. Your orator would further show that, according to the usage and business of express companies, your orator has provided wagons and horses, drivers, iron safes, and other conveniences with which it collects and delivers on the trains of defendant, express matter, using its own means, agencies and appliances alone about the same, until the same is actually delivered on the defendant's trains; and likewise using solely its own means and agencies in transporting and delivering such freights after they leave defendant's trains. And your orator would further show that it frequently has occasion to forward over the defendant's line immense sums of money, for which the defendant, having its property heavily mortgaged to secure existing debts, affords no adequate and prompt security or indemnity in case of loss; and so the safety of your orator and the defendant, as well as their convenience, has demanded, and the defendant according to the usage of railroad traffic in such cases has accorded, the means and facilities to your orator of forwarding such sums of money in the special care and custody of your orator's own agents; and otherwise your orator would be practically denied the opportunities of safe transportation of said sums of money over defendant's line, intended by the creation of the defendant as a common carrier for the public to be afforded the public.

XX. Your orator would further show that its interest, and the preservation of its valuable property and good will, demands that it shall continue to have and enjoy the means and facilities aforesaid heretofore by the defendant accorded as aforesaid; and for the use and enjoyment thereof your orator is always ready and hereby offers to pay such just and reasonable compensation and to conform to such just and reasonable rules and regulations as may be lawfully required and imposed by the defendant. Your orator is advised and believes, and therefore charges, that by reason of the premises hereinbefore recited the duty is now imposed upon the defendant to always afford to your orator, as one of the public, the means and facilities upon its railway, of forwarding and transport-

ing, in the manner established as aforesaid by the usage of
11 the express business, upon reasonable terms and under reasonable regulations, its express matter and messengers.

XXI. Your orator would further show that, notwithstanding it is the long-established custom of railroad companies to afford to companies and individuals engaged in the express business the means and facilities of forwarding in the passenger trains, under the special care of their own messenger and agent, their express matter, and notwithstanding the defendant has heretofore, according to such usage, uniformly accorded your orator the means and facilities aforesaid required in its business, and is yet able to do so; and notwithstanding, as your orator is advised and believes, it is not within the powers of the defendant to engage in the express business, the nature and character whereof is explained in the description of the powers of your orator, as set out in paragraph I of this bill.

Yet the defendant, intending and scheming to appropriate unlawfully and unjustly to itself the valuable business and property of your orator along its line of railroad, and to wholly exclude your orator therefrom, has given notice to your orator in words as follows, to wit:

"MEMPHIS AND LITTLE ROCK RAILROAD COMPANY,
"(as reorganized,)
"LITTLE ROCK, ARK., *June* 2, 1880.

"M. J. O'BRIEN, Esq.,
"*General Superintendent Southern*
Express Company, Memphis, Tennessee.

"DEAR SIR: Notice is hereby given you that the Memphis and Little Rock Railroad Company (as reorganized) has determined to transport all express matter and transact all express business on its own account, and through and by its own officers and agents, on and after the fourteenth day of June instant, in its own cars and on and over its own roads; and that any and all contracts or arrangements which may exist between this company and the Southern Express Company will terminate on the said fourteenth day of June.

12 "We shall be glad to receive, transport, and deliver any express matter you or your company may think proper to entrust to us, at reasonable rates and in conformity to law.

"Very truly, yours,
(Signed) "R. K. DOW, *President.*"

XXI[I]. And your orator avers that, unless restrained by this honorable court, the defendant will, on the fourteenth of June proximo, carry its intention into effect, and will exclude your orator and its business from its, the defendant's, trains, and will deny thereafter to your orator the means and facilities of conducting its business over the line of defendant's road, and thenceforward will afford to its own express organization exclusively the means and facilities of doing express business upon its line of railroad.

XXIII. Your orator further avers that successive actions at law,

to be brought upon daily tenders of express matter to the said defendant, and its daily refusals to transport the same, would involve your orator in a multiplicity of litigations, which it has not the ability to institute or prosecute on every occasion and in every county when and where such tenders and refusals should take place; and that such litigations would be valueless in point of recovery to the said Southern Express Company, and would not protect its right, on behalf of the public, to have its express matter carried on the same and equal terms with the Union or any other express company; and that such exclusion and ejectment, if it is permitted to take place, will not present the case of a single and temporary disturbance of the business of the Southern Express Company, but, from its very nature, will constitute a permanent, perpetual, and irreparable injury thereto, and the entire loss, within the localities designated, of its good will, business, reputation, and property therein, and would, within the same localities, permanently prevent it from accomplishing for the public the specific objects for which the said Southern Express Company was organized
13 and perfected; and that the said Southern Express Company is remediless in the premises at and by the course of the common law, and that the common law does not and cannot afford so adequate and perfect a remedy herein as it is within the jurisdiction and province of a court of equity to afford.

XXIV. And your orator further says, as it is advised and believes, and therefore charges, that the said defendant is a public corporation, created by the Legislature of the State of Arkansas, by aid of material assistance afforded by it and its municipalities as is hereinbefore said, for the public good; and that its charter imposes upon it the duties and obligations of a common carrier, and that among such duties and obligations is the duty of receiving and carrying express matter and freights for all persons upon the same and equal terms; and that such duty is due to every citizen, and in an equal measure to each; and that the public has a correlative right to demand and receive transportation for all of its express matter, whether tendered personally or by a representative, upon the same terms and conditions as such matter and freights are carried for others; and that the defendant has no lawful right to refuse to perform its duties or to discharge its obligations in this regard, but is bound to serve all with indifference and equal readiness, and cannot consent to carry for one and refuse to carry for another, or exercise, either directly or indirectly, unreasonable discrimination in terms, facilities, or accommodation, or deprive any portion of the public of its common right in that regard.

XXV. Your orator is advised and believes, and therefore charges, that it is the duty of the defendant to afford to your orator precisely the same means and facilities and opportunities of engaging in the express business along the defendant's road that it affords to its own express organization or service, and upon the same terms.

XXVI. Your orator further says that it is advised and be-
14 lieves, and therefore charges, that the proposed acts of the defendant in engaging in the express business and excluding

your orator and all others from engaging in the same is unlawful, and violative of the duties and obligations of the defendant; is inconsistent with the rights of the public; prevents lawful competition in business; is in restraint of trade, and creates a monopoly.

XXVII. And your orator further says, as it is advised and believes, that the said defendant is a public corporation and a common carrier under the charter aforesaid, and exercises thereunder a public office for the public good, and that as such it is amendable to the jurisdiction of a court of equity, and that such courts are always open and ready to exercise their powers for the purpose of compelling such corporations and common carriers to keep within the limits which the Legislature has thought proper to prescribe for the exercise of their powers, and not to exercise powers beyond those which their acts of incorporation confer; and to proceed by injunction to prevent illegal injury or destruction to the rights or property of others, and to prevent the execution of illegal contracts, or illegal exclusion from the enjoyment of public rights; and to protect all such rights in their fullest extent against all and every injury thereto; and that this court has power to protect the said Southern Express Company in the premises, and to compel the said defendant to exercise absolute impartiality toward all who desire accommodations upon its railway lines.

Wherefore your orator prays:

1. That a preliminary or provisional injunction may be issued against the defendant, its agents, officers, servants, and employés, restraining them, and each of them, until further order of this court, and particularly on the fourteenth day of June, 1880, and on any other day subsequent thereto, from interfering with or disturbing in any manner the enjoyment by the Southern Express Company of the facilities now accorded to it by the said defendant, upon its lines of railway, for the transaction of business of the said Southern Express Company, and of the express business of the public confided to its care; and from interferring with any of the express matter or messengers of the Southern Express Company, and from excluding or rejecting any of its express matter or messengers from the depots, cars, and lines of the said defendant, as the same have been heretofore, and are now, enjoyed and occupied by the said Southern Express Company, and from refusing to receive and transport, in like manner as the said defendant is now doing, over its lines of railway, the express matter and messengers of the said Southern Express Company, and from interfering with or disturbing the business of the said Southern Express Company, or its present relations in reference thereto, with the said defendant, in any way or manner whatsoever, and so long as the said Southern Express Company shall be willing and ready and offer to pay, according to its present contract rates with the said defendant, or such rates as shall be equal to those paid by others who are afforded the same facilities.

2. That the said defendant may be decreed by this court to transport, at all times, the express matter, safes, and messengers of the said Southern Express Company, by the same trains, and with the

same accommodations thereon, and in its depots and stations as it may transport its own express matter, or as it may accord to itself; and that the said defendant may be decreed so to transport the express matter, safes, and messengers of the said Southern Express Company at and for the statutory tolls and compensation in that behalf by law provided, and that the said defendant may be decreed to make a reasonable rebate or reduction, to be fixed and determined by this honorable court, from its charges to the said Southern Express Company by reason of its performance of said accessorial service as above specified, so long as the said Southern
16 Express Company shall offer to conform to all the reasonable rules and regulations of the said defendant, and to pay all lawful charges for the transaction of its said business.

3. That if any dispute or disagreement shall arise between the parties hereto during the pending of this suit and before a final decree herein upon the question of what is a lawful or reasonable compensation to be paid by your orator to the defendant for the transportation of the express matter, your orator may be permitted to bring the *the* same by way of interlocutory application to this court for its decision, and that, pending the inquiry thereon, the preliminary injunction heretofore prayed may be continued, to the same purport, tenor, and effect as if the prayer for the same were here repeated.

That a permanent injunction may issue herein to the same purport and effect as is hereinbefore prayed in regard to said provisional or preliminary injunction.

That your said orator may have such other relief or such further or different relief herein, with its costs, as to the court may seem meet.

To the end, therefore, that the said defendant may, if it can, show why your orator should not have the relief hereby prayed, and may, under its corporate seal, and according to the best and utmost of its knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to each and all of the matters and things in this bill of complaint contained, and that as fully and particularly as if the same were here repeated paragraph by paragraph, and it were specially interrogated thereunto severally, may it please your honors to grant unto your orator a writ of *subp-ena ad respondendum*, issuing out of and under the seal of this honorable court, to be directed to the said defendant, The Memphis and Little Rock Railroad Company, as reorganized, commanding it, on a certain day and under certain penalty, to be therein inserted, to appear before
17 your honors in this honorable court, and then and there full, true, direct, and perfect answer make to all and singular premises; and, further, to stand to, perform, and abide by such further order or decree herein as your honors shall seem meet; and also a writ of provisional and a writ of perpetual injunction to the same tenor, purport, and effect as is hereinbefore set forth and prayed.

And your orator will ever pray, etc.

THE SOUTHERN EXPRESS COMPANY,
By H. B. PLANT, *President.*

F. E. WHITFIELD, *Sol. for Complaint.*

UNITED STATES OF AMERICA, *District of* ———:

On this the eleventh day of June, 1880, personally appeared G. W. Agee, to me known, who, being by me duly sworn, on oath says: That he is the route agent for the complainant in the foregoing bill, and has special control of the complainant's business in the State of Arkansas, and, as such, is most fully advised of the matters in said bill; and that he has read the foregoing bill and knows the contents thereof; and that the same is true, except as to the matter therein stated on information and belief, and as to those matters he believes the same to be true.

GEORGE W. AGEE, *Route Agent.*

Subscribed and sworn to before me this eleventh day of June, 1880. RALPH L. GOODRICH, *Clerk.*

United States Circuit Court, Eastern District of Arkansas.

THE SOUTHERN EXPRESS COMPANY
vs.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY (as reorganized).

Upon the service upon this defendant of the subpœna herein,
18 and a copy of this order, let said defendant show cause, before me, at Little Rock, on the twenty-first day of June, 1880, at 10 o'clock a. m., why a provisional or preliminary injunction should not issue herein, according to the prayer of the bill in that behalf, and why the plaintiff should not have such other or such further or different relief as to the court then and there may seem meet.

In the mean time, and until the return day of this order, it is ordered that the said defendant, its agents, officers, servants, and employés be, and hereby are, by this order severally restrained from interfering with, or disturbing in any manner, the enjoyment by the Southern Express Company of the facilities now accorded to it by the said defendant upon its lines of railway, for the transaction of the business of the said Southern Express Company, and of the express business of the public confided to its care; and from interfering with any of the express matter or messengers of the Southern Express Company, and from excluding or ejecting any of its express matter or messengers from the depots, cars, and lines of said defendant, as the same have been heretofore and are now enjoyed and occupied by the said Southern Express Company, and from refusing to receive and transport in like manner, as the said defendant is now doing, over its lines of railway, express matter and messengers of the said Southern Express Company; and from interfering with or disturbing the business of the said Southern Express Company or its present relations in reference thereto with the said defendant in any way or manner whatsoever, and from proceeding in any manner on or after the fourteenth day of June instant to refuse to permit the said Southern Express Company to continue the transaction of the said business over the lines of the defendant on the same trains and conditions as are or may be permitted to the defendant's

own express service, or any other express company or individual for similar business.

HENRY C. CALDWELL.

Dated June 11, 1880.

19 *Answer of Defendant.*

In the Circuit Court of the United States for the Eastern District of Arkansas. In Chancery.

The answer of the Memphis and Little Rock Railroad Company, as reorganized, to the bill of complaint in this honorable court exhibited against it by the Southern Express Company.

Making all the necessary and usual reservations, this respondent, for answer to said bill of complaint, or to so much thereof as it is advised it is material or necessary for it to make answer unto, answering, says:

That it knows nothing of the corporate existence, capacity, or powers of the complainant, and if they, or any of them, be or become material for its defense, it asks that complainant be required to make strict proof thereof.

Defendant admits that express companies have for some years past, by the permission of railroad companies, been engaged in carrying parcels, etc., but it denies that, so far as itself is concerned, it is either unable or willing to carry for the public all articles, such as have been heretofore carried by express companies. On the contrary it avers that it is both able and willing to furnish to the public all the facilities in the transportation and delivery of
20 such articles as have been furnished by the complainant, and it says that it has organized its own express department, and is now actually carrying and delivering such matter between points on its own line and to connecting railroads for carriage and delivery at points beyond its line. And, as shown by complainant's own statement, this is all that complainant can do, as it cannot carry a package from Little Rock to Louisville, Kentucky, except by transferring the same, for carriage over part of the route and for delivery at Louisville, to another company.

Before reading the bill respondent had known something of the history of the express business, and had supposed that the companies conducting it had considerable capital invested in the business. But the statement in the third paragraph of the bill suggests two ideas which may not be irrelevant to the relief sought.

1. If respondent can be compelled to provide a car or car space on its passenger trains for complainants and to transport its messengers and other agents free, it can be compelled to do the same for the other one hundred and fifty-nine express companies, which complainant says exist in this country, and for as many more as under such an interpretation of the law would spring into existence. This at once proves the absurdity of complainant's claim.

2. That while dwelling lovingly upon the large aggregate capital of the 160 express companies, and claiming that their large capital

gives better assurance of payment in cases of loss than is afforded by the railroad companies, complainant carefully abstains from saying anything of its own capital or responsibility. That its responsibility is not very great to citizens of the State in which it is now insisting upon its right to do an exclusive express business, will be seen when the fact is known that the whole value of the property returned and listed by it for taxation in this State is, as respondent is informed and believes, less than one thousand dollars.

21 Respondents can safely say that its own responsibility exceeds that sum by many thousands of dollars; and it further says that no just or admitted claim or demand against it is unpaid.

Respondent supposes that the express companies have done large business for the Government and for the public. But it says that on its own line it can do for either the Government or public all that has or can be done by plaintiff in the carriage or delivery of packages of freight, large or small; that it can carry small and valuable packages, either of money or of other articles, as carefully and as safely as complainant can; that it can carry perishable articles with as great speed as complainant; that it can accept freights with the charges of the shipper attached, and can transport and deliver on payment of the charges, and return the charges to the consignor; that by the aid of other railroads it can accept freights, large and small, valuable, or of trifling value, to be carried between points only accessible by two or more railroads upon one contract, and it believes that all other railroads in the United States can and are willing to do the same. In short, save for the collection of debts, it can do all that complainant claims to do, as safely and as expeditiously as complainant can, and it will hardly be pretended that for its collection business complainant needs or is entitled to demand from defendant the facilities and preferences which it seeks by its bill. If it can, every other collection company or agent can claim the same privileges, and, as they are numbered by hundreds, defendant had better surrender to them its property. By its charter the State of Arkansas granted to respondent "the exclusive right of transportation or conveyance of persons, goods, merchandise, or produce," over its railroad, and being able and willing itself to do such carriage and conveyance, it knows no principle which justifies complainant in seeking to deprive it of the right given to it by the State which created it.

22 Respondent knows nothing of the contracts between complainant and the Adams Express Company, but says it had no part or lot in such contracts, and, as those contracts cannot affect it, has no reason to deny the statements in this behalf.

Respondent admits that it is a corporation created by the laws of Arkansas; that it does own and operate as a common carrier a railroad between Little Rock and a point on the west bank of the Mississippi river opposite Memphis, Tennessee; that it is equipped with cars necessary to do the business of complainant and other shippers, and that the former railroad company did receive some small public assistance, particularly the right to exercise in case of necessity the State's right of eminent domain, a right however which this re-

spondent has never used, as it has always purchased the rights of way which it has needed.

It admits that since its organization, on May 1, 1877, it has permitted complainant to conduct its business over its road in the manner, by this bill, seeks to perpetuate; but it denies that it has done so by reason of any contract with complainant. On the contrary, respondent has constantly declined to enter into any contract, either with complainant or with any other express company, although complainant and others have repeatedly applied to respondent for such contracts. Respondent so declined, desiring to be at all times prepared to take the express business in its own hands, and to do it itself, as has been done successfully by many other railroads in the country, notably, by the Baltimore and Ohio, the Atlantic, Mississippi and Ohio, and by the Little Rock and Fort Smith, or to be able to farm out such business to better advantage. The success of these roads demonstrates the falsity of complainant's claim that express companies alone are able to do this express business to the satisfaction of the public. And the fact that complainant
23 has never sought to establish its business on the Little Rock and Fort Smith railroad shows that, with all its apparent zeal for the interest of the public, it only seeks to condemn to its own use the roads over whose lines the business will pay, and that it is willing to leave that portion of its dear public who reside upon smaller and disconnected roads to the tender mercies of the railroad companies. Railroad companies, upon pain of forfeiture of their property, may be compelled to run their trains and to carry for the public, but whenever a route proves unremunerative, express companies may abandon it at pleasure.

In permitting complainant to do its business on its road, respondent acted under the provisions of its charter, which provides, "the said company may, when they see fit, farm out their right of transportation on said road." Thus, complainant merely represented respondent and had no privileges over its road except such as were tacitly accorded it by respondent. The compensation received by respondent from complainant was quite small, when compared with the rates charged by respondent to the general public, so that the business proved very profitable to complainant, as it admits. On account of the low terms enjoyed by complainant and the rapid material development of the country through which respondent's road passes, and of the States whose commerce is reached by the road and its connections, respondent had reason to expect a considerable increase of revenue from complainant's business, but its returns have almost remained stationary, showing either that complainant has not worked faithfully in respondent's interest or has failed to make proper returns. The actual sums paid by complainant to respondent per annum have been but little more than what would accrue to respondent for fare of its messengers and carriage of its safes if regular fares and rates had been charged. As evidence that complainant has not worked for respondent's interest, or has
24 made false returns, respondent states that the payments made by complainant in 1879 only exceeded the payments of 1878

by a little over seventeen dollars. The nature of the express business is such that respondent cannot overlook and control it, when in the hands of another company, without employing as much additional force and going to almost as much additional expense as would be required to conduct such business on its own account. And respondent says that this, of itself, is a good and sufficient reason for taking and doing the business itself, and for refusing to allow the complainant to continue to do it.

Respondent denies that complainant has made any investments upon or relying upon any promise or agreement, express or implied, of this respondent. It says that the fact is that when it purchased the road it now operates, May 1, 1877, it found complainant on the road with all its investments made and its agencies and business routes established, and that respondent tacitly permitted complainant to continue its business over its road. But it is now able, ready, and willing to do the express carrying business over its road for itself and for the benefit of its own stockholders, and desiring to take the business into its own hands it gave complainant the notice mentioned and copied in the bill. It repeats here what is said in that notice, that it is ready and willing to carry for complainant in the same manner and upon the same terms that it carries for all other shippers. It submits that this is the extent of its duty toward complainant, and no injunction of this court is necessary to compel it to discharge that duty. It submits that complainant has no privilege or right which is not common to all shippers, and it repeats that what it does for others it will freely and in its proper order do for complainant. None of the privileges claimed by complainant are accorded by respondent to any other shipper, and no other even asks such privileges. Respondent denies that it must give complainant the same privileges or facilities that it enjoys itself, for that would be to surrender to complainant a part of its corporate rights and privileges, and also to surrender to complainant the control of a part of its cars and business. All that it is required to do for complainant is to receive and carry for it in the same manner and at the same rates it does for others. In the conduct of its business, express and all other, it receives freights from the shippers, giving therefor a receipt or bill of lading, takes the freight into its own possession, loads it itself into its cars, carries it in its own custody, and at the place of destination delivers it to the consignee. All this it is willing, has offered, and again offers, to do for complainant.

Returning to the powers claimed by complainant in the first paragraph of its bill, and to its claims that railroads cannot do the business mentioned, respondent denies each and every allegation to that effect. It says that the business of accepting freights for transportation between points only accessible over two or more railroads is, and has been, an established business of the railroad companies of the Union for many years, and that such transactions are now of daily occurrence. Nothing is more common than for a railroad terminating in New York to accept freights to be carried to San Francisco, or other remote points of the Union, and to give to the shipper

the only contract for such carriage which he receives. And the history of the country proves that such contracts are in almost every instance performed to the letter. In the season for cotton shipments respondent issues many such bills of lading daily for cotton delivered to it to be transported to New York and New Orleans. Such cotton must pass through the hands of several roads to reach its destination; yet so well is the responsibility of respondent and its connecting railroad lines known that such bills of lading are freely accepted as security and advances made by the banks of the city and country upon the cotton so shipped and in the hands of re-
26 spondent and its connecting lines of railroads. And there has never been a day when the shipper of small and valuable articles could not have entrusted them to respondent in preference to complainant, if he had chosen, and, in fact, many such packages were sent by freight, that is by the railroad companies, in preference to the express companies, on account of the lesser charges made by the railroad companies. As to the carriage of live animals, the railroad companies, by reason of their lesser charges, have long since practically monopolized the business, the instances in which express companies have carried animals being few and rare.

That respondent is authorized to make contract for the delivery of freights on all points, whether accessible only by two or more railroads, and whether in different States or not, will be seen by examining the act of Congress to be found in section 5258 of the Revised Statutes of the United States. If any addition to the powers granted respondent by the State were needed, this act furnishes it.

Respondent denies that complainant has paid it the sum stated in the bill. It says that since its organization complainant has only paid it the sum of $17,985.27.

And now, having fully answered, respondent demurs to the said bill of complaint, and for cause of demurrer says there is no equity in the bill. And it prays to be hence discharged, with its reasonable costs.

B. C. BROWN,
For Defendant.

UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

John W. Goodwin, being sworn, says: That he is, and has been since its organization, the secretary and treasurer of the defendant, and that the facts stated in the foregoing answer as of knowledge
27 of the defendant are true, and that those stated as on information and belief he believes to be true.

JOHN W. GOODWIN.

Sworn to and subscribed before me, this twenty-first day of June, 1880.

[SEAL.] CALDWELL BRADSHAW,
Notary Public.

28 *Replication.*

In the United States Circuit Court.

UNITED STATES OF AMERICA, —— *District of Arkansas:*

The replication of the Southern Express Company, plaintiff, to the answer of the Memphis and Little Rock Railroad Company, defendant.

This repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that with any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove, as this honorable court shall direct, and honorably prays as in and by his said bill he hath already prayed.

F. E. WHITFIELD,
Sol. for Plaintiff.

29, 30, 31 *Supplemental Bill.*

In the Circuit Court of the United States for the Eastern District of Arkansas.

THE SOUTHERN EXPRESS COMPANY
vs.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, "As reorganized."

To the judges of the circuit court of the United States for the eastern district of Arkansas, in equity:

The Southern Express Company, a corporation created under the laws of the State of Georgia, brings this its supplemental bill of complaint against the Memphis and Little Rock Railroad Company, a corporation created under the laws of the State of Arkansas, and now engaged in business in the eastern district of said State of Arkansas, owning and operating therein a railroad as a public highway.

And thereupon your orator complains and says:

I. Since the filing of the original bill herein, which is yet depending, and the service upon the defendant therein of the subpœna therein, certain other and further facts have transpired which this plaintiff is advised and believes it necessary, right, and proper should be brought before this court by a supplemental bill, or a sup-
32 plement to the original bill herein; and it, therefore, prays leave to file this as a supplemental bill, or as a supplement to said original bill, under and pursuant to the rules and practice in such case made and provided.

II. The plaintiff refers to the original bill herein, reiterates the matters and things therein alleged, and makes said bill and the pleadings thereto, as well as the orders, writs, and other proceedings of thiscourt thereon, a part of this bill, as fully as if the same were here in words set out.

III. The plaintiff avers that after the filing of the original bill herein, to wit, on or about the fourteenth of June, 1880, the defendant engaged in the express business over its line of railroad, between the city of Little Rock, Arkansas, and the city of Memphis, in Tennessee, and in said cities has established express offices, agents, wagons, horses, and other express instrumentalities for the collection and distribution of express matter in said cities, and for the conduct of said business over the line of its railroad, and still is engaged in said business at said cities and over said railroad.

IV. The plaintiff, relying upon its legal rights, more fully set out in its original bill, and upon the orders of this court made thereupon, also continued to engage in the express business at said cities of Little Rock and Memphis, and upon the line of the defendant's railroad.

V. About the time the defendant engaged in the express business, the St. Louis, Iron Mountain and Southern Railroad Company, owning and operating a line of railroad in the State of Arkansas, also engaged in the express business over its road, and at Little Rock and other cities thereupon, and still is so engaged.

VI. The plaintiff is informed and believes, and therefore charges, that at the time they engaged in the express business, as aforesaid, the said two railroad companies had come under and subject
33 to the control or superior management of the same person or persons, whereby the said companies were confederated and combined together to exclude the plaintiff from their respective lines of railroad; and that thereupon placed their respective express interests and business under the management of the same persons, and entered into traffic arrangements with each other whereby the said express business is conducted as if by one company.

VII. Since the defendant has engaged in the express business as aforesaid, being restrained by the orders of this court made upon the original bill herein from executing its original unlawful purpose and intention of excluding the plaintiff from its railroad, it has continuously resorted to unlawful, unjust, arbitrary, and unreasonable expedients to circumvent the force and effect of the orders and decrees of this court made on the original bill as aforesaid; and by the imposition upon the plaintiff of unlawful, unreasonable, unjust, and discriminating terms, conditions, and restrictions, not imposed upon itself, engaged in the express business to destroy the plaintiff's business and competition on the defendant road, and to accomplish indirectly that exclusion forbidden by the orders of this court in this cause.

VIII. The plaintiff avers that the defendant has refused, and still refuses, to allow the express matter of plaintiff to be transported upon the defendant's trains, except upon the condition that the

plaintiff comply with and submit to said terms, conditions, and restrictions which are as follows, to wit:

IX. The defendant demands that the plaintiff shall pay for the transportation of its express matter upon defendant's road the following rates, to wit:

Packages of 100 lbs. or more, per 100 miles, 75 cents per 100 lbs.
Packages of 50 lbs., per 100 miles, 70 cents.
Packages of 20 lbs., per 100 miles, 40 cents.

34 Which rates are respectively 15 cents, 28 cents, and 40 cents per ton per mile, and for distances less than 100 miles the defendant demands much more exorbitant rates—in some cases amounting to as much as $1.50 per ton per mile.

X. The plaintiff, complaining thereof, avers that these rates are unreasonably exorbitant and many times greater than a reasonable compensation, and much greater than the compensation heretofore charged by the defendant, or usually charged by railroad companies for like service. The plaintiff avers that it is familiar with the tariff of rates of the prominent railroads of the United States, and avers that the average adequate compensation—meaning thereby a reasonable profit added to the cost of carriage upon said roads—does not exceed three cents per ton per mile upon freight trains; and it is further advised and believes, and so charges, that the additional cost of transportation on passenger trains, if any, does not exceed fifty per centum upon the cost of transportation upon freight trains.

XI. Plaintiff further avers that the defendant is at no expense for hauling, storing, loading and unloading, care, custody, or risk of plaintiff's express matter, all of which service is performed by the plaintiff for itself according to the usage established by railroad and express companies.

XII. Also the plaintiff avers that said rates are unreasonable, insomuch as the rates for small packages are proportionately much higher than the rates for larger packages.

XIII. The plaintiff, further complaining thereof, says that said rates are unreasonable, unjust, and discriminating to and against the plaintiff, because it avers the same are higher than the rates imposed by the defendant upon itself, or upon the public other than the plaintiff, for the transportation of express matter over its railroad; for it avers that whilst the defendant's charge to the
35 plaintiff on its railroad for transportation are the rates above mentioned, its charges to itself and the public, excluding plaintiff, are said rates less the value of the collecting, delivery, storing, hauling, handling, and risk and other service, commonly called "accessorial" service, performed thereabout.

XIV. Plaintiff further avers that the defendant engaged in the express business aforesaid pays to itself in its legitimate capacity as a railroad carrier greatly less than and, as plaintiff is informed and believes, not more than, one-half the above rates, for the same means and facilities of conducting the express business now enjoyed by plaintiff.

XV. Plaintiff further avers that by a long and universally estab-

lished usage, constantly observed, and not as a matter of convenience or source of profit only, but also as a necessary precaution for the safety and dispatch of its business, express companies make use of bags, trunks, packing-chests, safes, and bales, within which a number of articles or parcels destined to the same point are packed and forwarded as single packages to a single address, sealed or otherwise secured, as the circumstances demand or admit, and which are retained in the personal custody of and handled exclusively by the employés of the express companies. The plaintiff has always made use of such instrumentalities upon defendant's road and elsewhere. Yet upon such bags, trunks, packing-chests, and bales the defendant demands and exacts of the plaintiff three rates; that is, three times as much as its above-mentioned tariff for like bulk weight and character of express matter which has not been packed together as aforesaid by plaintiff; and upon safes and tin boxes the defendant exacts of the plaintiff six times said rates; that is, six times the amount charged upon goods, wares, and merchandise in other than packed parcels.

XVI. These bags, trunks, packing-chests, safes, and bales are sometimes packed by plaintiff, and sometimes received by the
36 plaintiff already packed and sealed, and are retained in the personal custody of and exclusively handled by the plaintiff's employees, according to the established usage in conducting the express business, and marked and consigned to a person and place designated by plaintiff, and are in all respects transported as a single package from a single shipper to a single consignee.

XVII. Plaintiff is advised and believes, and therefore charges, that the said rates exacted, as aforesaid, on bags, trunks, packing-chests, safes, and bales are illegal, extortionate, unjust, and discriminating.

XVIII. The plaintiff avers that the defendant, whose corporate powers authorize it to be a carrier by rail only upon a line of railroad therein located, have not fixed a tariff for the transportation of express matter by rail or upon their railroad, and, though requested by the plaintiff, have wholly refused so to do; but the defendant engaged in the express business, as aforesaid, for the purpose of excluding the plaintiff from its road and from competition with its own express department, has fixed a tariff of charges for its own express department which includes both railroad and express service; that is to say, includes compensation for transportation afforded by the defendant as a railroad carrier, and also compensation for the collection and delivery by the use of horses, wagons, drivers, and offices and other service peculiar to express carriage, and not pertaining to ordinary railroad freight; and demands that the plaintiff, though receiving from the defendant nothing but the railroad transportation, which alone it may lawfully render, shall pay therefor according to said tariff, and refuses to abate therefrom to the plaintiff the reasonable value of the service included in said tariff, but not performed for plaintiff.

XIX. The defendant insists that plaintiff shall open and disclose to the inspection of defendant's employés the contents of plaintiff's

covered express matter as an arbitrary right constantly to be
37 exercised, although such matter be free from just or reasonable suspicion of possessing dangerous or other obnoxious qualities.

XX. The plaintiff, complaining thereof as illegal, unjust, and discriminating, avers that the defendant has an arrangement or agreement with the St. Louis, Iron Mountain and Southern Railroad Company, and with the Pacific Express Company, by which, upon express matter shipped by its—defendant's—own express to be delivered to said St. Louis, Iron Mountain and Southern Railroad Company, or to said Pacific Express Company, or received from either of said last-named companies, to be transported over defendant's road, the defendant makes a lesser charge than that fixed by the aforesaid pretended tariff, and a lesser charge than it makes to plaintiff for the same weight and character of express matter, carried the same distance under like circumstances; and the defendant does not require such express matter as is received on its road from said two companies to be opened and inspected by its employés.

XXI. The plaintiff, complaining thereof, further avers that although it receives from any one of the public other than the plaintiff various parcels of express matter, not secured together, but consigned to the same destination and address, and transports the same for a compensation upon the gross weight thereof, the same as if such several parcels constituted only one, yet the defendant refuses to receive in like manner the express matter of plaintiff consigned to the same destination and address, and to charge upon the gross weight thereof, but demands that plaintiff shall pay upon its aggregated express matter according to another and higher tariff, assessing each article as if the same was a single and only shipment.

XXII. The plaintiff, complaining thereof, further avers that the defendant unlawfully and unjustly discriminates in favor of and gives preference to itself against and over the plaintiff, in
38 according the means and facilities of conducting an express business over its line of road, requiring of and imposing upon the plaintiff the aforesaid conditions and restrictions not required of or imposed upon its own express service, and granting to itself, in the conduct of an express, facilities, conveniences, and preferences not granted to plaintiff, whereby the plaintiff is greatly prejudiced in competition with defendant for the public patronage; and the defendant, wholly ignoring the plaintiff's business upon its road, refuses to negotiate or have business relations with plaintiff, in its character as a railroad company, and refuses to recognize plaintiff, except as a patron of itself, in its capacity as an express company, and refuses to carry the plaintiff's express matter, except subject to the inspection, control, and arbitrary rules, orders, or judgment of the joint employés of the defendant and said St. Louis, Iron Mountain and Southern Railroad Company, who are wholly disconnected with the conduct and management of the corporate functions of said railroad companies, and who are personally and in interest hostile to the interest and welfare of plaintiff.

XXIII. The plaintiff further avers that it has been constantly

and unremittingly protesting to the defendant against the matters herein complained, and has been unremitting in its efforts amicably to have corrected the said matters of complaint; and recently it supposed the most grievous of said matters were amicably adjusted under an arrangement to be in force at least during the pendency of the suit in the original bill herein. Said arrangement was made on the basis of a proposition submitted voluntarily by one Aiken, superintendent of the joint express departments of defendant and said St. Louis, Iron Mountain and Southern Railroad Company, and by him declared to be fair and reasonable, and such as the railroad companies aforesaid should concede, and under the spirit and force of the understanding then had with the said Aiken, the rela-
39 tions between plaintiff and defendant promised to be endurable; but within the last thirty days the defendant has recommenced its mode of annoying and embarrassing plaintiff, by the renewal of the onerous rates, conditions, regulations, and restrictions hereinbefore complained of; whereupon the plaintiff sought this relief without delay.

XXIV. The plaintiff avers that the matters herein complained of are of daily occurrence, and by reason thereof plaintiff's business at said cities of Little Rock and Memphis, and along the line of defendant's railroad, and the value thereof is greatly impaired, for which plaintiff has no adequate remedy at law; that actions at law for each of the said grievous acts, and the repetitions thereof, would involve a multiplicity of suits.

XXV. Whereupon the plaintiff prays that this bill may be filed as a supplemental bill, or as a supplement to the original bill herein, and that by a modification of the injunction granted upon the original bill herein, or by an alias writ of injunction further issuing from this court, the defendants, its officers, agents, and employees, be severally restrained from demanding of plaintiff, for the transportation of its bags, safes, packing-trunks, chests, and boxes a higher rate than upon other freight of like weight and bulk; from charging plaintiff a higher rate than it charges for similar express matter received from or destined to the custody of the St. Louis, Iron Mountain and Southern Railroad Company's express, or the Pacific Express Company; from discriminating against the plaintiff in favor of itself, or any other express company or person, in the matter of rates, traffic, arrangements, terms, conditions, rules, or regulations touching the transportation of express matter on the defendant's railroad; from charging the plaintiff a proportionately higher rate upon small packages than upon large packages; from charging the plaintiff for the transportation of its express matter otherwise than upon the gross weight of all of its matter consigned from the same point to the custody of plaintiff or plaintiff's agent
40 at the same destination; from charging plaintiff other than at a rate which shall be a strictly reasonable compensation for transportation upon defendant's railroad, and the service necessarily performed by defendant in connection therewith; from charging the plaintiff for the transportation of its express matter a higher rate than that ascertained by deducting from the tariff fixed to the

public by defendant's express department, the fair value of the services rendered by the plaintiff, and from charging the plaintiff more than remains after deducting from said rates the fair value of the services in the transportation of express matter, usually and according to custom performed by express companies, and not usually performed by railroad companies in the transportation of freight, or by the defendant in the transportation of its general freight carried by it as a railroad carrier; from charging the plaintiff a higher rate than defendant's express department pays defendant's railroad department for express facilities.

Plaintiff prays that a preliminary injunction issue to like tenor and effect, and for such other and further or different relief as the premises considered may to the court seem meet and proper; and the plaintiff further prays that if it shall appear to the court that the matters herein recited are not properly presented and cognizable in the form of a supplemental bill, or supplement to the original bill, then the same may be filed as a petition filed in the aforesaid suit pending as aforesaid, and that plaintiff have such relief in respect to the matters complained of as to the court seems meet and proper.

XXVI. To the end, therefore, that the said defendant may, if it can, show why the plaintiff should not have the relief herein prayed, and may, under its corporate seal, and to the best of its knowledge, full, true, and perfect answers make to each and all the matters and things hereinbefore alleged, may it please your honors to grant unto the plaintiff a writ of *subpœna ad respondendum*, issuing
41 out of and under the seal of this honorable court, to be directed to the said defendant, The Memphis and Little Rock Railsoad Company, as reorganized, commanding it on a certain day, and under a certain penalty to be therein named, to be and appear before your honors in this court, and then and there full, true, and perfect answer make to all and singular the premises, and to stand to, perform, and abide by such further orders and decrees as to your honors may seem meet.

And plaintiffs will ever pray, etc.

F. E. WHITFIELD,
Plaintiff's Solicitor.

UNITED STATES OF AMERICA, *District of West Tennessee*, } ss:

Personally appeared H. C. Fisher, who, being duly sworn, says he is the superintendent of the Southern Express Company, and as such has the fullest knowledge of the matters charged in the foregoing bill of complaint; that he has read said bill, and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believes the same to be true.

H. C. FISHER.

Subscribed and sworn to before me, this May 11th, 1881.

[SEAL.] M. B. TREZEVANT,
United States Commissioner, District West Tennessee.

42–43 *Answer to Supplemental Bill.*

In the Circuit Court of the United States for the Eastern District of Arkansas. In Chancery.

THE SOUTHERN EXPRESS COMPANY, Complainant,

vs.

THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as reorganized, Defendant.

The answer of the Memphis and Little Rock Railroad Company, as reorganized, to the supplemental bill or petition in this cause and court exhibited against it by the Southern Express Company.

This respondent, making all the usual and necessary reservations, for answer unto said supplemental bill or petition, or to so much thereof as it is advised it is necessary or material for it to make answer unto, answering, says:

I. That it reiterates each and every statement, allegations, matter, or thing in its original answer to the original bill in this cause contained, and makes, so far as may be necessary or proper, its said answer a part of its answer hereto.

II. It admits that on or about the day stated it did commence the carriage of the class of freights which for distinction is usu-
44 ally called "express matters" over its road, and that to increase its said business it did provide and now keeps in the cities of Little Rock and Memphis offices, one in each city, agents, one in each city, wagons and horses, the latter to be used and now used by defendant for the collection and delivery of freights in its express department.

III. It admits that the complainant has also continued its express business over the line of respondent's road, and in said cities and upon and at the towns and stations on the line of respondents' road.

IV. It admits that the St. Louis, Iron Mountain and Southern Railroad Company has also commenced the carriage of the same class of freights over its road, and that it receives and delivers such freights in the city of Little Rock.

[As in this answer the St. Louis, Iron Mountain and Southern Railroad Company must be often mentioned, to save labor it will hereafter be called the I. M. Co.]

Respondent denies *in toto* the allegation that this respondent and the I. M. Co. have come under or are under the management of the same person or persons. The converse of this is shown by the fact of public notoriety, well known to all well-informed persons, that before this supplement was filed the I. M. Co. had been consolidated with and become a part of another corporation known as the Missouri Pacific Railroad Company, while this respondent remains intact, a separate corporation, and having a separate existence.

The allegation that the I. M. Co. and respondent have at any time agreed or arranged with one another to carry on the express business practically as one company, is also wholly false. The only grounds for such a supposition are:

1. That the same person being a stockholder in both companies has for a short time been the president of both; and

45 2. That the I. M. Co. and respondent have employed the same person as general superintendent of their express departments, and that in the city of Little Rock they employ the same agent and use the same office, clerks, and wagons and horses. The object of this arrangement was economy. By sharing these general expenses the expense of both companies was reduced, and for the same purpose since this arrangement was effected between them they have extended part of the arrangement to the Little Rock, Mississippi River and Texas Railroad Company, which company has its business in its express department done in the same office, and pays part of the office and wagon expenses. Aside from sharing these expenses the two companies, the I. M. and respondent, are entirely separate and distinct, in their express departments as in every other. They actively compete for business in and at every point where competition can be made pay; each has its own manager and offices, and the manager of the one has nothing whatever to do with the business of the other. The express department of respondent is merely a department of its general business, kept like its freight department under subordinate management for purposes of convenience and efficiency. The superintendent of the express department of respondent, Mr. James Aiken, the same person who is the superintendent of the express department of the I. M. Co., is, as to all business of respondent, subject to the supervision and control of Mr. E. K. Sibley, the general manager of respondent's whole business. The agent at Little Rock and at every other point, and each and every detail of the express business, is also subject to his supervision and control.

At Memphis respondent provides its own office, agent, horses, and wagons; it pays its own expenses in the express department as in every other, and every dollar of the receipts from the express business done by it goes into its own treasury for the benefit of

46 its own stockholders. It is wholly untrue that respondent entered into any combination with the I. M. Co. to exclude complainant from both roads. No such combination or agreement was ever made. Respondent had never made any contract with complainant. It believed that by entering into the carriage of that class of freight generally called express freight it could increase its income, and being under no obligation, legal or moral, to complainant, it commenced the business for the purpose of adding to its receipts. It is untrue that respondent has ever sought to exclude complainant from shipping freights on and over its road. It has always been willing, and is now willing, to carry for complainant upon the same terms that it carries for any one else. It is not true that the express departments of the I. M. Co. and respondent are joint in any sense of the word. The express department of respondent is, as before stated, separate and distinct from that of the I. M. Co., and is simply a department of respondent's general business.

It is not true that this respondent has any traffic arrangement

with the express department of the I. M. Co., or with the Pacific Express Company, the benefits of which are not now, and have not always been, open to the complainant whenever it chose to avail itself of them upon the same terms and for the same prices charged to the first-named companies. The truth is here, that complainant has always refused to accept the terms given the I. M. Co., or to transact its business with respondent in the manner that it is conducted by the I. M. Co.

This respondent has no other traffic arrangement with either the express department of the I. M. Co. or with the Pacific Express than the common arrangement which exists in all departments of all railroad companies and between all railroad companies for the interchange of business, and for carrying forward to destination the freights delivered by one to another. The matter of which
47 complainant is seeking to complain is not developed in its bill, but is studiously concealed under general forms of expression. But, as respondent has nothing whatever to conceal in this matter, it will here state the whole matter as it understands it.

In either its express or freight department the I. M. Co. will accept from a shipper an article to be carried to Memphis from, say Texarkana, and will give the shipper a through bill of lading or receipt, binding itself for the transportation of such article to destination. The I. M. Co. will, in such case, either accept payment of freight in advance, or will carry the article, the freight to be paid by the consignee. It brings such article to Little Rock, and there delivers it to respondent, who completes the carriage and delivery. If the freight was prepaid, the I. M. Co. pays respondent its charges for its share of the carriage; if not prepaid, respondent collects and pays to the I. M. Co. It has long been the custom of railroad companies, a custom which has the merit of good sense and fair dealing, to give lower proportionate rates upon articles carried long distances; and in the arrangement of through schedule it is possible that between some places reached over the two lines the rate is lower than it would be if the article were shipped to Little Rock, and then again shipped to Memphis, although it was not the intention of respondent to make them so when the rate was established. It is possible, however, that such instances do occur; and if they do, complainant, if it will do business with the respondent in the same manner that the other named companies, will get the benefit of it. But this complainant refuses to do. It never delivers to respondent at Memphis or anywhere else on respondent's line an article to be carried to any point beyond respondent's line, whether on the I. M. Co.'s road or elsewhere. Nor does it ever, so far as respondent is informed, deliver to the I. M. Co. a package to be carried
48 to a point beyond its line. In dealings with respondent it ships all its freights from Memphis to Little Rock, and, as respondent understands it, there reships freights going upon the I. M. to destination. Consequently respondent cannot give it the benefit of any through arrangement it may have with other companies, because complainant's freights being shipped local on respondent's line, and not through, respondent has no means of knowing

where the destination of its freight is intended by complainant to be.

It is not true that respondent has resorted to any means whatever to evade the intent and meaning of the injunction granted by this court. On the contrary, it has extended to complainant every facility itself enjoys in the conduct of its express business. In doing so it has not only been greatly damaged in its business and suffered great loss, but it has been compelled by this court to extend to complainant privileges which it does not and cannot extend to other shippers, in violation of the constitution of the State of Arkansas, and at the risk of causing proceedings against it by the State for the forfeiture of its charter. One of these, the most important and the most onerous to respondent, is, that under the injunction of this court, and ever since it was granted, complainant has claimed and exercised the privilege of loading and unloading its own freights upon and off respondent's cars, and of keeping its freight in its own custody during transit on respondent's road. It is easily seen that this is a privilege which respondent could not grant to every shipper; yet such is the respect respondent and its officers entertain for this court, it has allowed complainant ever since the injunction to exercise this privilege, although during all the time it knew that it was thereby violating, in the plainest manner, the constitution of the State of Arkansas.

By its motion for dissolution of the injunction, respondent now presents this matter to the court, and respectfully asks that it may be relieved from the necessity thus imposed upon it.

49 Respondent admits that it does charge complainant the rates mentioned in the ninth clause of the complaint; that it charges somewhat greater rates for freights sent shorter distances, and that it charges special rates on small packages. It charges complainant exactly the same prices that it charges other shippers, and it knows no reason why it should, in violation of the constitution and laws of the State, discriminate in complainant's favor. That this matter may be fully seen by the court, respondent herewith files a copy of its schedule of rates for freights carried in its express department. If it can get one, it will also file herewith a copy of the schedule of rates which complainant charges those of the public who entrust it with their freights, for the same carriage upon respondent's road, and if it cannot get one, it asks that complainant be compelled to produce and file a copy of its said schedule. By this it will be seen that complainant makes the same charges for its services that is made by respondent; that it charges the rates named in its supplement; that it makes greater charges for carriage for shorter distances, and charges special rates for carriage of small and valuable packages; in short, that complainant makes the same charges to the public of which it complains when called upon to pay them itself. If respondent has, as is alleged, no legal right to make such charges, it respectfully asks where complainant gets or finds the right to make them itself. Respondent, by its charter and the law of the State, is authorized to fix its rates for carriage; but where complainant, which is a foreign corporation, and does business in this State only through comity, gets its right to make such

charges, to force itself upon respondent's road, and there to demand rights and privileges which are not and cannot be given to other shippers of like freight, respondent fails to see, and most respectfully asks of complainant information. While upon this subject, as com-
plainant in its original complaint or bill speaks of the great
50 benefit it gives to the public, and in its supplement speaks of
"competition" with respondent on its own road, respondent files herewith, marked Exhibit III, a paper which contains and shows the prices charged by the Southern Express Company for carriage of parcels of all weights between Memphis and Little Rock before the respondent entered upon the carriage of freights, and in the next column shows the prices for the same carriage established by respondent when it commenced the bussiness, and to which it has since adhered, and which respondent avers is strictly correct; and respondent also states, what an examination of the schedule of complainant will show, that immediately upon respondent entering upon the business, complainant reduced its charges to the prices thus fixed and charged by respondent, making, as will be seen, a reduction from its former charges of upwards of thirty-three per cent.: and respondent charges that through every department of the business equal changes by reduction were made by respondent, and that the same have been made by complainant; so that it is evident that when complainant had a monopoly of the business it was constantly making to the public most extortionate charges, and that its claim of being a public benefactor is but a sham and a pretense.

Respondent does not know how to answer the allegation in the supplement, that three cents per ton per mile is a sufficient price to yield a fair profit, and that transportation upon passenger trains does not cost over fifty per cent. more than transportation upon freight trains, for the reason that it does not know what is the cost to it for transportation per ton per mile upon either train; and respondent avers that neither complainant nor any of its officers know anything more of the matter than it does. To ascertain such cost is a problem which has exercised the brains of the best informed railroad men for many years, and which has never been solved.

The cost of transportation differs upon different roads;
51 it differs upon the same road from day to day, and differs upon the same day and upon the same road between trains. Complainant is certainly mistaken, and very greatly mistaken, in its statement that the cost of transportation upon passenger trains only exceeds the cost of like transportation upon freight trains by about fifty per cent. This must be but a guess, and respondent thinks is a very bad one. Passenger trains haul more dead weight than freight trains, and run faster; and it has been calculated, discarding dead weight and taking only into consideration relative speed, by competent experts, that the cost increases according to the square of the number of miles traveled per hour. Upon this subject respondent can only say that the cost of carrying and caring for a small package is certainly greater, proportionally, than the cost of carrying a large one or a car-load, and that the risk and responsibility of carrying a package of perishable or breakable arti-

cles, or a package of money, diamonds, or other valuables, is proportionally much greater than that of carrying an equal weight of cast-iron. Railroads and express companies have always recognized these differences, and, as shown, the complainant has taken them into consideration in making up its schedule of charges; and, further, respondent says that it has tried to fix reasonable charges; that it has compelled complainant to reduce its former charges; that no shipper, save complainant, objects to respondent's charges as unreasonable or exorbitant, and that whatever may be the cost of carrying freights, respondent has never been able to make its income amount to enough, after paying expenses, to yield or pay one dollar of dividend to one of its stockholders.

Respondent admits that it charges complainant more for carriage of its freights than it charges itself, or that it requires complainant to pay more than it pays to itself, for in fact it pays nothing to itself. As before stated, the express department is simply a
52 department, or, more accurately speaking, a part of respondent's general business. The receipts from it go into respondent's treasury, and its expenses are paid from the treasury. Respondent does not and cannot charge itself for the use of its own cars and other vehicles and fixtures used in its business, or for the carriage of its own employés, any more than a merchant can charge himself for the use of his own counters and shelving; and to say that respondent shall make complainant pay no more than it pays to itself for this service, would be to say that it should carry for complainant for nothing.

It is true that respondent refuses to make any deduction from its general rates to complainant on account of the fact that complainant, against respondent's will, and to its great injury, insists under the orders of this court upon handling, storing, loading, and unloading from respondent's cars its express matter, and upon keeping it in its own custody while in transit; but it denies that it is at no expense or trouble or that it has no risk on account of or because complainant does these things. This brings up the question of the so-called accessorial service, a matter which complainant, in all its bills, always mentionsin general terms, claiming credit for it, but which it never explains until compelled to do so; and respondent adds that the only time of which respondent is informed when a partial explanation of what complainant means and claims by this term "accessorial service," was forced out before a court; that court saw and remarked upon its outrageously unfair character. Respondent asks leave to elucidate it fully in this proceeding, both by statement in this answer and by testimony in court. The complainant claims that its term "accessorial service" includes all expenses; or, as it was stated in evidence by its superintendent, includes the gathering up and delivering freights by means of its wagons, the making out of its own way-bills, the hauling to
53 and from respondent's cars, the expenses of keeping up its offices, wagons, and other facilities, the salary of its officers and wages of its employés, including its messengers and agents, and in general all its business expenses of every character. All these

expenses, it claims, respondent should pay by deduction from the charges made by it. It is easily seen that if this claim can be successfully established, complainant's business will be all profit, while the share of the railroad companies upon whose roads it operates will be the payment of its expenses.

Dividing for convenience this accessorial service claim, the respondent submits that as to so much of it as includes the salaries of officers and office expenses, and other expenses of like character, the claim of complainant is so manifestly devoid of equity that it needs no answer. As to the collection and delivery of freights by wagon, and loading and unloading it to and from respondent's cars, respondent says that neither respondent nor complainant does this business at any place upon respondent's line except at the cities of Memphis and Little Rock. At both those places both complainant and respondent does this for the same reason that a merchant sets up and keeps a delivery wagon—to increase his general business. Neither complainant nor respondent makes to the shippers any extra charge for the reception of his express matter at his place of business within those cities, or for its delivery to a consignee within the same cities. If a shipper carries his package to the depot of respondent, and there delivers it to the messenger of either on board the train, and if the consignee comes to the depot and receives it, the same charge is made as though it had been received at the consignor's place of business and delivered at the consignee's. Neither complainant nor respondent makes any reduction in such case. Respondent denies that it is at no expense in regard to freights thus
54 delivered, loaded and unloaded, by complainant; besides the trouble which necessarily arises from two sets of persons delivering, loading, and unloading freights to and from the same car at the same time, respondent has found by experience that it costs it more to obtain from complainant a fair and truthful statement of the freights it thus puts upon the cars, and to circumvent the sharp practices practiced by complainant, some of which will be hereinafter stated, and that it loses more by such sharp practices than it would cost it to do the hauling, loading, unloading, and delivery of all freights shipped by complainant. Knowing this, it has heretofore offered complainant to do all this for it for nothing, which offer was refused; and now here again respondent repeats the offer in good faith, and will give any necessary security for the performance of its offer. Respondent, the complainant notifying it in the same manner that is used by other shippers of the whereabouts of any article it desires shipped in either of the cities named, will send its wagon and agent to the place, receive the article, give a receipt for it, haul it to the depot, load it in its car, take care of it, carry it to destination on its line, and there, if at a way station, where neither complainant nor defendant keeps a wagon, will deliver it to complainant's agent or to the consignee at its depot on demand; and, if the destination is in either of the cities named, will deliver it, in either city, to the consignee therein named by complainant, and will make no extra charge for so doing. In other words, it will

do all of complainant's real accessorial work, making no extra charge therefor; and further, it asks the privilege of doing so.

As to that part of the claim of services rendered to defendant in the keeping by complainant its freights in its own custody, or that of its own messengers, while in transit on respondent's road, respondent says that so far from being a benefit to it, it is a direct, constant, and serious injury. Very many articles shipped by express are valuable, and upon such packages, as appears from their sched-
55 ules, both complainant and respondent makes an additional charge to cover the increased risk of loss and damage. The course adopted by both complainant and defendant is that when an article is delivered for carriage the shipper is called upon to state its value. If he refuses to do so, or if it is less in value than fifty dollars, he is given a receipt limiting the liability of the company receiving it, whether complainant or defendant, to fifty dollars. If he states the value, the extra charge is made upon the value according to the schedule. All who ship over defendant's line comply with this reasonable regulation save complainant. Complainant, to injure defendant, refuses either to accept receipts limiting liability of defendant, or to disclose to respondent the value of such packages carried and pay the extra charge, claiming and exercising the right of keeping its freight in the custody of its messenger; and the respondent being compelled by this court to submit, it thus not only evades payment of part of respondent's just dues, but imposes upon respondent a large, constant, and unknown liability, for which it receives no compensation. Nor is this the only way in which respondent is damaged by the complainant thus retaining the custody of its freights. A large and unknown liability is thus imposed upon it, from which, in case of embezzlement by a messenger of complainant, or of loss through his negligence, it has no opportunity to shield itself. It can always be shown by shippers and by complainant that such a package was upon its train, but having no means of knowing at the time of shipment or during transit that it was upon the train, it can neither give the care to its safety which it otherwise would, nor, in case of loss, make proof of the circumstances, and is wholly at the mercy of complainant. In other words, through complainant's unjust action respondent is made liable for the value of all packages transported by complainant, although not entrusted with their custody and given no opportunity to care for their safety.

56 The question of packed parcels comes in properly for explanation here. The complainant will bring to respondent a box or a bag, in which it has packed, perhaps, fifty packages of a pound each, to be carried from Memphis to Little Rock. When it reaches destination it will open and distribute them to different consignees, charging each fifteen cents, and receiving for its carriage seven dollars and fifty cents. Respondent is responsible for the value of each one of these packages, and yet complainant insists that for such packed parcel respondent shall only charge it fifty cents, and shall from that make a very large deduction for its so-called "accessorial services." But this does not stop even here. Complainant charges more for short distances than for longer ones

in proportion, and so does respondent. Complainant frequently brings a bag, box, or parcel to respondent's cars marked through from Memphis to Little Rock, or the contrary. On the way that package or box will be opened by complainant's messengers upon respondent's cars, and packages taken therefrom and distributed to way stations on the line. This, it will be easily seen, much increases respondent's liability, and at the same time deprives it of much income to which it is entitled. Respondent has nothing to do with the selection of complainant's messengers, and has no control over their action, yet it is forced to guarantee their faithfulness and honesty. In its own business it can watch the conduct of a messenger, discharge him if his action is suspicious, or take bond from him for faithful and honest discharge of his duties; but complainant's messengers are beyond its control, and yet it has to risk their action.

It would be impossible to detail all the subterfuges resorted to by complainant to wrong and defraud respondent out of its just dues, and many of them will have to be left to be developed in the evidence, which respondent hopes will be called for and heard by the court, upon the presentation of complainant's supplement.

57 Respondent does not believe that this court intended by its injunction to allow complainant to thus injure and wrong respondent, and increase its already extensive liability, and it takes this opportunity to bring the acts and doings of the complainant to the knowledge of the court for its consideration, and that it may have relief therefor.

Another practice of complainant needs mention. It brings to respondent's cars and loads and forces respondent to carry safes and boxes, which, perhaps, weigh a hundred pounds, but which may contain a hundred thousand dollars in currency, refuses to disclose the contents, and insists that respondent, under pain of being attached for contempt of this court, shall carry such safes at the same price it would charge for carriage of the same weight of cast-iron. It was to try to break up this practice of complainant, or to get some poor equivalent for its extra risk, that respondent established the three-and-six rates complained of in the supplement. Even at these rates complainant was, and is, largely gainer, and respondent is largely loser. But respondent never desired to keep up these rates. What is desired was to get complainant either to fairly and honestly disclose the contents of such safes and packages and pay respondent's rates upon them, or to get complainant to do what every other shipper does when he declines to state value and accept one of respondent's receipts, limiting its liability of the same character as receipts issued by complainant itself in such cases. Respondent established these rates to apply generally to every shipper, but it does not seek to conceal that they were established because of complainant's unfair conduct, and that they affect complainant alone, not because they are not general in their character, but because no other shipper but complainant thus seeks to defraud respondent.

58 How complainant submitted to them, and what efforts it made to avoid them; how it has treated respondent in regard to them, will be told hereafter. But to show that respondent

is telling the exact truth in stating that it desired to get complainant to relieve it from this great and unknown liability by accepting the common receipt, respondent states that it did, through the superintendent of the express department, make the agreement with complainant mentioned, but the terms not stated in the supplement; and it admits that the agreement was made in the shape of a proposition by respondent, accepted by complainant. The agreement is contained in the letter dated March 3, 1881, addressed by respondent's said superintendent of its express department to all agents upon the I. M. road and the road of this company. This letter was written in the office of complainant at Memphis, in the presence of Mr. Fisher, the superintendent of complainant's business on those roads, was submitted to him and approved as containing the agreement, and he took a copy of it. Believing that complainant had made it in good faith, respondent caused all its agents to be instructed in accordance with it by letters similar, and indeed exact copies of the one exhibited herewith, marked IV, and respondent's said superintendent understood Mr. Fisher to agree that he would instruct his agents and employés to act in full accordance with this agreement. Yet this agreement was broken and violated by complainant within one week after it was made. Within one week complainant, through and by its agents and officers, refused to accept such receipts, and began and continued to open and distribute from safes, boxes, and packed parcels en route or in transit. And since and up to this time complainant has always refused to abide by any part of said agreement, has refused to accept such receipts, and has, against the remonstrances of respondent, constantly continued to open such packages and distribute from them while in transit.

Finding that complainant would not comply with its agree-
59 ment, respondent, by letters from its said superintendent to its agents and employés, dated April 16, 1881, a copy of which is exhibited, marked V, re-established the same rates, and since demands payment of them. The allegation in the supplement, that respondent demands that complainant disclose to the agents of respondent the contents of valuable packages shipped by it, has reference to this matter, and is simply intended by respondent to ascertain its liability and to prevent complainant from thus defrauding it. Complainant has always known that if it would accept receipts like those accepted by other shippers and such as it gives itself, no request to know the value of packages would be made, and that only single rates would be charged.

Respondent further says that it is informed and believes and will show that the complainant, some months ago, in the cause of the same complainant *v.* The I. M. Co., now pending in the circuit court of the United States for the eastern district of Missouri, in some way applied to that court, and thereby brought before the court that the said I. M. Co., in its express department, was charging complainant the three and six rates mentioned in this supplement; that upon hearing thereof the said court refused to interfere therewith, or in any manner to restrain respondent from making such charges. And respondent says that at the time its answer was

filed in the original case, to wit, on the twenty-first day of June last, it was here in open court agreed between counsel for complainant and the counsel for this respondent that, as the case against the I. M. Co. pending in said circuit court for the eastern district of Missouri, involved the same matters, and as that suit had been first begun, that if complainant desired any further action of the court in regard to rates or anything connected with the conduct of the business, it might apply to that court in that case, upon notice to the counsel therein for the I. M. Co., and that whatever that court might order should be entered by consent as the order and
60 judgment of this court, which agreement was made at the time, in the presence of, and with the consent of this court; and respondent submits, as the complainant has made this same application to that court, and as that court has passed upon and refused it, that complainant should be precluded thereby, and that this court should refuse to hear this application, or to make any order thereon different from the said action of said circuit court of the eastern district of Missouri.

And respondent also, further answering, denies all intent or wish to evade the orders of this court, and says that in all its doings it has constantly obeyed the order and injunction of this court, even to its own injury, as it understood it, and as its counsel advised it was its true intent and meaning. And it says that as to the three and six rates mentioned in the supplement, those rates were established by respondent November 12, 1880; that since then complainant made the application to the said circuit court, eastern district of Missouri; that complainant also afterward, in February, 1880, applied to the circuit court of the United States for the western district of Tennessee, and not disclosing to that court the pendency of this suit, or the fact that this court had taken cognizance of the matters in issue, and had granted its injunction therein, obtained from that court an injunction restraining respondent from charging more than fifty cents per hundred pounds per hundred miles; that complainant caused respondent and its officers and agents to be attached by the last-named court, and put it to great and unnecessary expense and trouble, and that said injunction was by said last-named court dissolved upon the pendency of this suit being brought to its notice by plea of respondent. And it says that save during the time when respondent, believing that complainant had made the agreement aforementioned in good faith, acted thereunder, and save by its application to said court, complainant has acquiesced in said
61 rates and in the construction thereby by respondents placed upon the order of the court, and complainant should not now be heard in regard to such matters.

And having fully answered, etc.

B. C. BROWN, *For Respondent.*

THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, (as reorganized,)

[SEAL.] By JOHN W. GOODWIN, *Secretary.*

62–63 *Stipulation.*

In the Circuit Court of the United States for the Eastern District of Arkansas. In Chancery.

THE SOUTHERN EXPRESS COMPANY, Complainant,
vs.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, Defendant.

In the above cause it is hereby stipulated:

I. The Southern Express Company, complainant, may file replications to the answer of defendant at any time within thirty days from the date hereof.

II. That the time for taking testimony in said cause be extended to the first day of April, 1881, and that either party may, upon proper notice, take and file their depositions of witnesses up to and until that date.

III. That the cause be set down for hearing at the April term, 1881, of said court upon the pleadings and testimony and exhibits with either, and upon the general demurrer of defendant to complainant's bill reserved in the answer.

IV. That all testimony taken by either party in the cause of The Southern Express Company *vs.* The St. Louis, Iron Mountain and Southern Railroad Company, pending in the circuit court of the United States for the eastern district of Missouri, may be used
64 in and upon the hearing of this cause, so far as it may be applicable, but copies of all such testimony which either party desires to use shall be copied, either in writing or print, and filed in this court and cause before or by the said first day of April, 1881.

V. All technicalities and formal irregularities, not going to the merits of the cause, are hereby waived.

VI. This stipulation shall be filed and made part of the record of the cause.

Signed and agreed September 1, 1880.

F. E. WHITFIELD,
Counsel for Plaintiff.
B. C. BROWN,
Counsel for Defendant.

65 In the Circuit Court of the United States for the Eastern District of Arkansas. In Equity.

THE SOUTHERN EXPRESS COMPANY, Complainant,
vs.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as reorganized, Defendant.

It is agreed that upon the hearing of the above-entitled cause the matter herein following shall be taken and considered as evidence admitted without further proof, subject alone to exceptions for competency and relevancy:

I. That the Southern Express Company began doing business over the Memphis and Little Rock Railroad while said road was

owned and possessed by a former company, which company has since ceased to operate said road.

That said express company began such business under a contract with such former railroad company—a copy of which is hereto attached—and has never since made any other contract in respect thereto with said former company or its successors, but has continued to
66 conduct its business over said railroad under its successive managements, without further express agreement or contract, until the day when, as shown by the record, the defendant notified the complainant of its intention to do its own express business, receiving from, and paying for, express facilities afforded on said railroad by the several managements thereof, according to the terms and provisions of said contract.

II. That the whole amount of express matter ordinarily carried over defendant's road by both complainant and defendant is not more than one competent messenger could handle and care for according to the usage of the business.

III. That the express department of the defendant is conducted as a department of its general business; that all the expenses of such department are paid by defendant, and all receipts go into defendant's treasury, and that the express department of defendant is not connected with, nor a part of, the express department of any other railroad company; that the business of such express department is under the charge and control of the general manager and other officers of defendant, and not subject to the control of the officers of any other railroad or express company.

IV. That no connection exists between defendant and any other express company; that at the city of Little Rock the defendant, in the management of its express business, the Pacific Express Company, and the Little Rock, Mississippi River and Texas Railroad Company employ the same agent, who, however, is paid by each separately for services rendered to each.

V. That the Southern Express Company, in conducting its business over the defendant's road, now and heretofore has and employs only its own officers, agents, offices, wagons, safes, messengers, and other express equipment, and does not make use of the offices, wagons, agents, messengers, safes, or other express equipment of the defendant's express department; but declines to avail itself of their use, or to accept in its business any service from the de-
67 fendant except transportation or space in its passenger trains, and access thereto for its express matter and its officers and messengers in custody thereof.

VI. That for express matter carried over said railroad by the plaintiff in the custody of its messengers, and exclusively handled by the plaintiff's employés, the defendant charges the plaintiff without abatement the same compensation that it charges those of the public who ship their express freight over the defendant's road in the care and custody of and to be hauled and handled by the employés of the defendant's express department, and also passenger fare for messengers; and that these rates of charges are according to

a tariff purporting to be the defendant's express tariff, a copy of which is, or will be, filed in the record of this cause.

A copy of the tariff of plaintiff used in its business, and upon which its charges for carriage of express matter of all kinds on defendant's road were based, before defendant began doing an express business; a copy of tariff plaintiff established and used on same road since defendant began an express business, and a copy of the bill of lading given shippers by plaintiff are hereto attached and made parts of this agreement.

VII. That the defendant has not made, and refuses to make, any special tariff for express companies conducting an express business over its road in the manner that the plaintiff conducts its business.

VIII. That the defendant is engaged in precisely the same character of express business as is the plaintiff, conducting the same just as the plaintiff and other express companies, and receives and transports express matter for the public upon a bill of lading, the form and substance whereof is set out in copy thereof, hereunto attached.

IX. The contract referred to in paragraph I of this stipulation was amended in respect to certain rates only on January
68 14th, 1874, by the general superintendent of the Memphis and Little Rock Railway Company, and the defendant has suffered the plaintiff to carry over its said road its express matter and to do an express business thereon upon the same rates and terms as were fixed by said contract thus amended until the commencement of this suit. Said contract, dated May 26th, 1871, and said amendment thereto, in the form of a letter, addressed, under date January 14th, 1874, by A. S. Livermore, general superintendent, to M. J. O'Brien, general superintendent Southern Express Company, are fully set out in copies thereof hereunto appended.

It is also stipulated that the original charter of the Memphis and Little Rock Railroad Company and the amendments thereto, and the several mortgages of said railroad company, and the official proceedings of the said company, as the same are set out in a certain pamphlet, entitled, on its title page, "Documents relating to the Reorganization of the Memphis and Little Rock Railroad Company. Little Rock, Ark.: W. H. Windsor, Printer and Book-Binder, 1877," or so much thereof as either party may see proper to introduce at the hearing of this cause; and also all laws, public or private, of the State of Arkansas, and provisions of the constitution of said State relating to railroad companies or pertinent to the issues in this cause, may be given in evidence on the trial thereof, as if the same had been duly and formally proven and certified to the court according to the rules of law and said court.

F. E. WHITFIELD, *Sol. for Pl'ff.*
B. C. BROWN, *Sol. for Def'd't.*

69 LITTLE ROCK., ARK., *May* 26, 1871.

Memorandum of an Agreement made this day with the Southern Express Company and the Memphis and Little Rock Railroad.

Railroad company to furnish end of baggage car for express ser-

vice, when convenient, but privilege of substituting box-car reserved.

Express company to report monthly to the railroad company correct gross weights of all freights carried, and pay said railroad company upon the following basis:

Hopefield to Huntersville, and beyond Devall's Bluff, and similar distances, per 100 pounds, 75 cents.

Hopefield to Devall's Bluff and beyond Madison and similar distances, per 100 pounds, 60 cents.

Hopefield to Madison, similar distances and under, per 100 pounds, 40 cents.

Mineral water, ice, and fruit, above three divisions, 50 cents, 40 cents, 30 cents per 100 hundred pounds for respective distances.

Hopefield to Devall's Bluff, for White River freight, only per 100 pounds, 40 cents.

Railroad company will furnish front end of baggage car or end next engine, coming west, for express service.

Express messenger will have the privilege of excluding all parties from his portion of said car, but no responsibility shall rest upon the railroad company for any violation of this rule.

The railroad company will furnish their freight laborers, when possible, to assist in handling express freight at Hopefield.

Express company assumes all risks for the transportation of express matter over said road, except such damage as may arise from the gross neglect or carelessness of the said railroad company.

70 Express company to transport, free of charge, all matter for railroad company originating or terminating at any point on line of said railroad, (Memphis and Little Rock included,) the express company excepting "river risks" on ferry boat.

On matter for said railroad company originating at or destined for points beyond above stipulation, the express company will charge said railroad company two-thirds of their regular rates for that portion of said service beyond the line of said railroad, as above stipulated; said matter to be transported on the customary conditions of said express company.

Safe and packing chests will be estimated at 100 pounds daily, and reported accordingly. Messenger will be carried free on said railroad.

General officers of express company will be passed free, and route agent and other express employés will be carried free when on actual business for said express company upon request of president or superintendent of express company.

This agreement takes effect June 1, 1871, and may be terminated by either party on thirty days' notice.

In witness whereof, the parties have hereunto set their hands and seals the day and date above written, at Little Rock, Arkansas.

MEMPHIS & LITTLE ROCK RAILROAD COMPANY,
By A. S. LIVERMORE,
General Superintendent.
M. J. O'BRIEN,
General Superintendent Southern Express Company.

MEMPHIS, TENN., *January* 14, 1874.

M. J. O'BRIEN, Esq., *General Superintendent*
Southern Express Company, Memphis, Tenn.

DEAR SIR: In reply to yours of the thirteenth, will say
71 that your figures are correct, and from and after February 1, 1874, we will accept from this depot to depot in Little Rock forty-seven and one-half cents per one hundred pounds on express business from points north and east of Louisville and Chattanooga for Little Rock and points beyond. On all other business, seventy-five cents per hundred pounds from this depot to depot in Little Rock. Local same as heretofore. Of the above amounts please report ten cents for transfer steamer "H. C. Nutt," balance for this company.

Yours truly, A. S. LIVERMORE,
General Superintendent.

☞ Read this Receipt.

SOUTHERN EXPRESS COMPANY, Express Forwarders.

DOMESTIC BILL OF LADING.] ——— ———, 188–.

Received of —— ——, valued at ——— dollars, and for which amount the charges are made by said company, marked ———.

Which it is mutually agreed is to be forwarded to our agency nearest or most convenient to destination only, and there delivered to other parties to complete the transportation.

It is part of the consideration of this contract, and it is agreed, that the said express company are forwarders only, and are not to be held liable or responsible for any loss or damage to said property while being conveyed by the carriers to whom the same may be by said express company entrusted, or arising from the dangers of
72 railroads, ocean or river navigation, steam, fire in store, depots, or in transit, leakage, breakage, or from any cause whatever, unless, in every case, the same be proved to have occurred from the fraud or gross negligence of said express company, or their servants, unless especially insured by it and so specified on this receipt, which insurance will constitute the limit of the liability of the Southern Express Company in any event; and if the value of the property above described is not stated by the shipper at the time of shipment, and specified in this receipt, the holder hereof will not demand of the Southern Express Company a sum exceeding fifty dollars for the loss of, or damage to, each package herein receipted for. Nor shall the said company be held responsible for the safety of said property after its arrival at its place of destination.

And if the same is entrusted or delivered to any other express company or agent (which said Southern Express Company are hereby authorized to do), such company or person so selected shall be regarded exclusively as the agent of the shipper or owner, and, as such, alone liable, and the Southern Express Company shall not be, in any event, responsible for the negligence or non-performance of any such company

or person; and the shipper and owner hereby severally agree that all the stipulations and conditions in this receipt contained, shall extend to and inure to the benefit of each and every company or person to whom the Southern Express Company may entrust or deliver the above-described property for transportation, and shall define and limit the liability therefor of such other company or person. In no event shall the Southern Express Company be liable for any loss or damage, unless the claim therefor shall be presented to them in writing at this office within thirty days after this date, in a statement to which this receipt shall be annexed. All articles of glass, or contained in glass, or any of a fragile nature, will be taken at shipper's risk only, and the shipper agrees that the
73 company shall not be held responsible for any injury by breakage or otherwise, nor for damage to goods not properly packed and secured for transportation. It is further agreed that said company shall not, in any event, be liable for any loss, damage, or detention caused by the acts of God, civil or military authority, or by insurrection or riot, or the dangers incident to a time of war.

Charge on value, ———. Freight, ———.

For the company, ——— ———.

[Indorsement.]

MEMPHIS AND LITTLE ROCK RAILROAD CO. EXPRESS DEPARTMENT.

Read this receipt. ——— ———, 188–.

Received of ———, said to contain ———, valued at ——— dollars, marked ———.

Which we undertake to forward to the nearest point of destination reached by this company, subject expressly to the following conditions, namely: This company is not to be held liable for any loss or damage, except as forwarders only; nor for any loss or damage by fire, by the dangers of navigation, by the act of God, or of the enemies of the Govenment, the restraints of Government, mobs, riots, insurrections, pirates, or from or by reason of any of the hazards or dangers incident to a state of war. Nor shall this company be liable for any default or negligence of any person, corporation, or association to whom the above-described property shall or may be delivered by this company, for the performance of any act or duty in respect thereto, at any place or point off the established routes or
74 lines run by this company, and any such person, corporation, or association is not to be regarded, deemed, or taken to be the agent of this company for any such purpose; but, on the contrary, such person, corporation, or association shall be deemed and taken to be the agent of the person, corporation, or association from whom this company received the property above described. It being understood that this company relies upon the various railroad and steamboat lines of the country for its means of forwarding property delivered to it to be forwarded, it is agreed that it shall not be liable for any damage to said property caused by the detention of any train of cars or of any steamboat upon which said property shall be placed for transportation; nor by the neglect or refusal of any railroad

company or steamboat to receive and forward the said property.

It is further agreed that this company are not to be held liable or responsible for any loss of, or damage to, said property, or any part thereof, from any cause whatever, unless in every case the said loss or damage be proved to have occurred from the fraud or gross negligence of said company or their servants; nor in any event shall this company be held liable or responsible; nor shall any demand be made upon them beyond the sum of fifty dollars, at which sum said property is hereby valued, unless the just and true value thereof is stated herein; nor upon any property or thing unless properly packed and secured for transportation; nor upon any fragile fabrics unless so marked upon the package containing the same; nor upon any fabrics consisting of or contained in glass. If any sum of money besides the charges for transportation is to be collected from the consignee on delivery of the above-described property, and the same is not paid within thirty days from the date hereof, the shipper agrees that this company may return said property to him at the expiration of that time, subject to the conditions of this receipt, and
75 that he will pay the charges of transportation both ways, and that the liability of this company for such property while in its possession for the purpose of making such collection shall be that of warehousemen only. In no event shall this company be liable for any loss or damage, unless the claim thereof shall be presented to them in writing at this office within ninety days after this date in a statement to which this receipt shall be annexed. The party accepting this receipt hereby agrees to the conditions herein contained.

For the Company: ——— ———, *Agent.*

76 UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

Be it remembered, that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 11th day of April, anno Domini one thousand eight hundred and eighty-one, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on April 21, 1881:

THE SOUTHERN EXPRESS CO.
v.
THE MEMPHIS & LITTLE ROCK R. R. CO. } 381.

Comes defendant, by B. C. Brown, Esq., its solicitor, and files herein its motion to dissolve the injunction; which motion is in words and figures following, to wit:

The defendant moves the court to dissolve the injunction in this cause.

B. C. BROWN,
For Defendant.

And on July 14, 1881, the following proceedings were had, to wit:

77 This cause came on by consent, to be heard in vacation, upon the motion of respondent to dissolve the injunction heretofore allowed, and the court having heard the argument of counsel, and being fully advised, overrules said motion.

And this cause coming on to be heard, by consent, upon the — of complainant to modify the injuction heretofore allowed, and the court having heard the argument of counsel, and being advised, orders that said injunction be, and the same is, modified, by adding thereto the following words, to wit: And the said respondent, The Memphis and Little Rock Railroad Company, its servants, employés, and agents, and each of them, is hereby further enjoined and restrained until the final hearing of this cause from demanding from or charging to the complainant more than a fair and reasonable compensation for the transportation of express matter, including closed packages, over its lines of railroad; such charges in no case to exceed the rate charged upon similar express matter received from or delivered to the Iron Mountain and Southern Railroad Company Express, or the Pacific Express Company.

78 UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

Be it remembered, that at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the 10th day of April, anno Domini one thousand eight hundred and eighty-two, at the United States court room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on April 12, 1882:

And now, on this day, come the parties aforesaid, and by their counsel then and there present, bring on this cause to be heard on the pleadings and proofs, and the same were then and there presented to the court, and the argument of counsel for the respective parties was heard, and the said cause is then and there submitted; and due deliberation having been thereupon had, it is by the court ordered, adjudged, and decreed as follows:

1. That the express business, as fully described and shown in the record, is a branch of the carrying trade that has, by the necessities of commerce and the usages of those engaged in transportation, become known and recognized so as to require the court to take notice of the same as distinct from the ordinary transportation of
79 the large mass of freight usually carried on steamboats and railroads.

2. That it has become the law and usage, and is one of the necessities of the express business, that the property confided to an express company for transportation should be kept while in transit in the immediate charge of the messenger or agent of such express company.

3. That to refuse permission to such messengers or agents to accompany such property on the steamboats or railroads on which it is so carried, and to deny to them the right to the custody of the prop-

erty while so carried, would be destructive of the express business and of the rights which the public have to the use of such steamboats and railroads for the transportation of such property so under the control of such messengers or agents.

4. That the defendant, its officers, agents, and servants, have no right to open or inspect any of the packages or express matter which may be offered to it for transportation by the plaintiff's company, or to demand a knowledge of the contents thereof, nor
80 to refuse transportation thereof unless such inspection be granted or such knowledge be afforded.

5. That it is the duty of the defendant to carry the express matter of the plaintiff's company, and the messengers or agents in charge thereof, at a just and reasonable rate of compensation, and that such rate of compensation is to be found and established as a unit, and is to include as well the transportation of such messengers or agents as of the express matter in their custody and under their control.

6. That on and subsequent to the 1st day of May, 1877, the said defendant afforded to the said plaintiff all the facilities needed by it for the conduct of its express business over the defendant's lines, and such as are specifically in the bill herein set forth: that thereafter the defendant notified the plaintiff that such facilities would be withdrawn, and that it was the intention and purpose of the defendant to exclude the plaintiff's company from its lines on and after the 21st day of June, 1880; that such intention and purpose were restrained by the preliminary injunction order of the
81 court, which said injunction order was afterwards modified, as appears in the record.

7. That it is the duty of the defendant to afford to the plaintiff all express facilities and to the same extent and upon the same trains that said defendant may accord to itself or to any other company or corporation engaged in the conduct of express business on the defendant's lines, and to afford the same facilities to plaintiff on all its passenger trains.

8. That the plaintiff keep and render monthly a true account of the services performed for it by defendant, and pay therefor at the rate hereinafter specified on or before the fifteenth of each month after the date hereof for the business of the month preceding and *and* that the defendant has no right to require pre-payment for said express facilities or payment therefor at the end of every train, or in any other manner than as is herein provided, and that plaintiff's execute and deliver to the defendant a bond in the sum of
82 twenty-five thousand dollars ($25,000), conditioned well and faithfully to make such payments as are herein provided, and with surety to be approved by a judge of the court.

9. That it is and was the duty of said defendant to afford and to have afforded such facilities to the plaintiff as herein specified for a just and reasonable compensation.

10. Whereas it is alleged by complainant that since the commencement of this suit and the service of the preliminary order of injunction herein, the defendant has, in violation of said injunction and

of the rights of complainant, made unjust discriminations against complainant, and has charged complainant unjust and unreasonable rates for carrying express matter; therefore, it is ordered that complainant have leave hereafter to apply for an investigation of these and similar allegations; and for such order with respect thereto as facts, when ascertained, may justify, and for the appointment of a master to take proof and report thereon.

83 11. That the defendant, its officers, agents, servants, and employés, and all persons acting under their authority, be, and they hereby are, permanently and perpetually enjoined and restrained from interfering with, or disturbing in any manner, the enjoyment by the plaintiff of the facilities provided for in this decree to be accorded to it by the said defendant upon its lines of railway, or such as have been heretofore accorded to it for the transaction of the business of the plaintiff, and of the express business of the public confided to his care, and from interfering with any of the express, matter or messengers of the plaintiff, and from excluding or ejecting any of its express matter or messengers from the depots, trains, cars, or lines of the said defendant, as the same are by this decree directed to be permitted to be enjoyed and occupied by the said plaintiff, and from refusing to receive and transport, in like manner as the said defendant is now transporting, or as it may hereafter trans-

84 port, for itself or for any other express company over its lines of railway, the express matter and messengers of the said plaintiff, and from interfering with or disturbing the business of the said plaintiff in any way or manner whatsoever; the said plaintiff paying for the services performed for it by the defendant monthly, as herein prescribed, at a rate not exceeding fifty per centum more than its prescribed rates for the transportation of ordinary freight, and not exceeding the rate at which it may itself transport express matter on its own account, or for any other express or other corporation, or for private individuals, reserving to either party the right at any time hereafter to apply to this court, according to the rules in equity proceedings, for a modification of this decree as to the measure of compensation herein prescribed.

12. It is further ordered, adjudged, and decreed that the defendant pay the costs to be taxed herein, and that an execution or fee bill issue therefor; and the said defendant enters herein its prayer for appeal, which prayer is granted.

85 UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining of record in my office.

In witness whereof, I have hereunto set my hand and the seal of said court, this 28th day of June, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States of America the one hundred and sixth.

Attest: [SEAL.] RALPH L. GOODRICH, *Clerk.*

83 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the
[SEAL.] circuit court of the United States for the eastern district of Arkansas, Greeting:

Whereas in a certain suit in said circuit court between The Southern Express Company, complainant, and The Memphis & Little Rock Railroad Company (as reorganized), defendants, which suit was removed to the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, administration of the record and proceedings of said cause has been suggested, to wit:

87 "The opinions of the said circuit court filed in said cause; the testimony taken by either party in the cause of the Southern Express Company *vs.* The St. Louis, Iron Mountain & Southern Railway Company, in the circuit court of the United States for the eastern district of Missouri, referred to in the first stipulation contained in the record herein, on file in this court; the contract referred to in the first paragraph of the second stipulation contained in the record herein, on file in this court; the tariff of the defendant; the tariff and bill of lading of the plaintiff, referred to in the sixth paragraph of said second stipulation; the bill of lading of *of* the defendant, referred to in the eighth paragraph of said second stipulation; the contract of May 26th, 1871, and the letter of January 14, 1874, referred to in the ninth paragraph of said stipulation; the original charter of the Memphis & Little [Rock] Railroad Company; the amendments thereto; the several mortgages of the said railroad company, and the official proceedings of the said company, as the same are set out in a certain pamphlet entitled on its title-page: 'Documents Relating to the Reorganization of the Memphis & Little Rock Railroad Company, Little Rock, Ark.; W. H. Windsor, Printer;' all laws, public or private, of the State of Arkansas, and provisions of the constitution of said State relating to railroad companies, referred to in paragraph 9 of said second stipulation."

88 You, therefore, are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the second day of March, A. D. 1883.

JAMES K. McKENNEY,
Clerk Supreme Court U. S.

89 Be it remembered that on the eleventh day of June, 1880, came into the office of the clerk of the circuit court of the United States for the eastern district of Arkansas, The Southern Express Company, by Seward & Whitfield, Esq's, its solicitors, and filed therein a bill of complaint against The Memphis and Little

Rock Railroad Company, as reorganized, which bill of complaint is in the words and figures following, to wit:

90 In the Circuit Court of the United States for the Eastern District of Arkansas.

To the judges of the circuit court of the United States for the eastern district of Arkansas:

The Sourthern Express Company, a corporation and citizen of the State of Georgia, brings this its bill against the Memphis and Little Rock Railroad Company, as reorganized, a corporation and citizen of the State of Arkansas.

Par. I.

And thereupon your orator, the said Southern Express Company, complains and says:

Your orator, the Southern Express Company, is a corporation duly created, organized, and now existing under the laws of the State of Georgia, for the purpose and with the powers necessary thereto of receiving and forwarding upon railroads, steam vessels, and other vehicles of rapid transportation, in a safe and secure manner, and with the greatest practical expedition, in the special care and custody of its own employees, and at destination, personally delivering packages of money or currency, gold and silver bullion, bonds, bank notes, deeds, and other valuable papers, jewels, silks, laces, and other articles of great value, requiring for their security extraordinary care and precaution, and also parcels or goods, wares, and merchandise requiring great dispatch or careful handling, and and also fruit, vegetables, fresh meats, fish, oysters, fish spawn, and other articles liable to decay or other injury from delay; and also

91 live animals requiring particular care and attention during transportation; and also for receiving and forwarding for collection bills, notes, drafts, and accounts, and receiving and returning payment thereof; and also for receiving and forwarding all articles of trade and commerce with the bills and charges of the shipper thereto attached, to be collected of the consignee on the delivery of such articles, and returned to shipper; and in so doing to afford the public under a single contract, and on assured responsibility, safe, reliable, and speedy transportation from and to all points accessible only over two or more railroads, and generally to perform for the public all offices that by usage are incident to the class of carriers now well known, recognized, and designated by the public as express carriers.

II.

Your orator would further show that railroad companies, by reason of the limited extent of their lines and powers, and the extraordinary care and attention demanded, and the peculiar and immense hazard and other difficulties and embarrassments incident thereto, were not only unwilling, but unable to perform for the public this

kind of transportation and service in a manner as efficient, and with as responsible assurances of safety and dispatch as the necessities and convenience of the public demand, but by usage have surrendered the same to be performed by express companies, organized and equipped especially therefor, and by long custom and usage, as well as in respect to their lawful right thereto, have accorded to express companies for a reasonable compensation the means and facilities upon their lines for doing this kind of transportation.

III.

The express business, first organized in the United States about the year 1839 between Boston and New York, has grown to such dimensions that, extending now over all the States of the Union and Canadas, and to Europe and the West Indies, it is carried on
92 by over one hundred and sixty different express organizations, meeting the requirements of the public in the localities in which such business is transacted, and occupying therefor without molestation nearly every prominent railway line in the United States. Such express companies have in the aggregate, as your orator is informed and believes, an investment in capital and equipment of over $30,000,000, and such amount as your orator is also informed and believes, and, therefore avers, is not encumbered by mortgage or other lien, and constitutes at all times a fund amply sufficient to secure the public against any probable loss of its property while in the custody of the express companies, and which security is not afforded, as your orator is informed and believes, by any railway company in the United States.

IV.

All of said express companies, as your orator is informed and believes, have invested their capital and built up their business upon the express understanding with the railway companies that they would voluntarily afford all the facilities needed by the express companies as the representatives of the public for the transaction of its business, or upon the knowledge and belief that the public, whether demanding such facilities in its individual capacity, or through the express companies as its representative, had a legal right to compel the granting thereof, by those who had been created by the public and for the public.

No railroad company in the United States, to the knowledge of your orator, has ever refused to transport express matter for the public upon the application of some express company, or some form of legal constitution. Every railway company, so far as your orator is advised, has recognized the right of the public to demand transportation by the railway facilities which the public has permitted
93 to be created, of that class of matter which is known as express matter, and no railway comyany, to the knowledge of your orator, has ever had the ability to assume, as between itself and the public, such obligations for the transportation of such matter as

are universally assumed by the express companies toward all who treat them with frankness.

V.

The principal public demand for the existence and use of an express company has been as a medium of exchange of money, and the collection of negotiable securities, and the transportation of express packages of greater or less value, or of packages the price or value of which was to be collected from the consignee at the time of delivery, and remitted to the consignor.

VI.

The public has always demanded in the transaction of its business of this character an undoubted financial responsibility on the part of the carrier, known integrity on the part of the employés, and the invention and application of all moral and mechanical safeguards which ingenuity or experience could devise or suggest. It has also required instrumentalities for the primary collection and subsequent delivery of express matter, for the relief of the public generally in that regard. This demand has been made with full knowledge on the part of the public of the capacity and responsibility of the existing railroad, steamboat, and stage companies, and was, and always has been, a demand for facilities and security which those companies did not afford.

VII.

The Government of the United States, as the representative of the public, has for the reasons aforesaid availed itself of the
94 facilities and security afforded by the express companies to an extent sometimes larger and almost always equaling the demands of the general public. The laws of the United States now in force permit the use of the mails for the transportation of moneys and of many articles which are known as express matter at what are called "third-class rates," and the railway companies of the country, unless forbidden by their charters, have also instrumentalities for the transportation of moneys and securities from point to point, but neither the Government of the United States nor the public generally have ever used, to any appreciable extent, either the mail or railway facilities for the transmission of such moneys and securities. The express companies have been created by the public as their instrumentalities for the transmission as well of public as of private moneys, as aforesaid, and the necessity for the existence of such instrumentalities is as great as the necessity for the existence of the ordinary vehicles of commercial intercourse.

VIII.

In receiving, transmitting, and delivering express matter for the public, the express companies act as the agents of the public, giving that attention to the collection, transmission, and delivery thereof which neither the public nor the railway companies can give.

IX.

Before the commencement of hostilities in the late civil war the Adams Express Company, a joint stock association, carrying on the express business under the laws of the State of New York, was engaged in carrying on the express business in all the Southern States, and upon all the principal railroads therein, and was then possessed of a large and valuable equipment necessary for the
95 conduct thereof, and had created and built up for itself a valuable business therein, and had possessed and enjoyed the good will of the public in respect thereto. For controlling reasons of a public character, then generally known, the said Adams Express Company was compelled to withdraw from Southern territory, and it thereupon, in or about the month of July, 1861, sold and transferred to your orator, the Southern Express Company, its said equipment, business, and good will in the several Southern States, to wit, in Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, and a portion of Tennessee. And thereafter said business was in the said several States owned, possessed, enjoyed, and carried by the said Southern Express Company in the like manner as the same had been theretofore conducted by the said Adams Express Company.

X.

For the use of the equipment and enjoyment of the good will aforesaid the said Southern Express Company, in the conduct of its said business, was afforded all the facilities necessary therefor by all the principal railways in said States over which the business of the public required the said Southern Express Company to extend its lines. And from time to time the Southern Express Company enlarged and extended its aforesaid business upon and along the lines of the several railroads thereafter built in the territory aforesaid; and for the despatch of its business so extended, provided at great expense skillful and faithful servants, safes, and packing chests, peculiarly suited to the safe transportation and storage of money and valuable packages; wagons, horses, and trucks for collecting, transferring, and making delivery of express matter; and erected at various railroad stations permanent offices and warerooms; and
96 established lines of rapid communication, and fixed and published tariffs of charges between all accessible points in said Southern States. And thence hitherto having conducted said business for a period of nearly twenty years, it has, at great expense of money and energy, built up in said territory, and now owns and enjoys therein, an express business of great value, and by its faithfulness to and zeal for the interests of the public, and by the fairness and promptness with which it has performed its obligations, and by the reasonableness of the charges it has always made, it has earned and now enjoys an enviable and widely advertised reputation for responsibility and promptness, and has secured the confidence of the public, and thereby a good will and commercial stand-

ing of great and inestimable value to your orator in the business aforesaid, and all of which constitutes its property.

XI.

Your orator would further show that the defendant is a corporation created under the laws of the State of Arkansas, for the purpose of owning and operating, and does now own and operate, as a common carrier for the public, between the city of Little Rock and a point on the Mississippi river oposite Memphis, Tennessee, a railroad, in the construction of which the defendant was largely aided by munificent public grants and powers, including the power to exercise the right of eminent domain.

XII.

Your orator would further show that said defendant, the Memphis and Little Rock Railroad Company, as reorganized, is duly equipped with light, durable cars, especially constructed and intended to be attached to their passenger trains, and used for the transportation of express freights, and express messengers in charge thereof, and is also equipped with all other means and facili-
97 ties necessary to your orator for carrying on its express business as aforesaid, and since its construction has heretofore continuously afforded to your orator, as one of the public engaged in the express business, the means and facilities of conducting its business over its railroad in the manner required for the convenience and safety of your orator's business, and established by the usage of railroad and express companies in like cases.

XIII.

For the transportation of its express matter over the lines of the defendant, the Southern Express Company has paid the defendant the sum of $55,115.88 for the years from 1871 to date, inclusive, of which a large proportion was paid to said railway company for the transportation of express matter, not local, to the defendant's line, but going to or coming from points beyond the termini of defendant's railroad, and mostly to or from other States of the Union.

XIV.

Relying upon the duty and obligations imposed upon said railway company by law, and the conditions of the enjoyment of its franchises, as well as by the contract aforesaid to always afford to your orator, for a reasonable compensation, equal and indiscriminate opportunities and facilities of transportation of the kind and to be enjoyed in the manner demanded by the convenience and necessities of the public, and established by the usage and custom of said railroad company, and all other railroad companies in like cases, your orator made large investments of money in building up its business at said stations and along and upon said railroad, and in

establishing other and connecting routes for business to be transported beyond the lines of said railroad, and in advertising the same to the public; and by such investments and its energies expended through a long time, to secure to the public the facili-
98 ties of safe and rapid dispatch to any and all places, and to itself the confidence and patronage of the public, it has built up, and now owns and enjoys, an express business and prestige and good will thereto, upon said line, of great value to your orator, by reason of the tolls and profits thereby accruing to your orator.

XV.

Being thus organized and established in the said Southern States, after the close of the war, the Southern Express Company entered into an arrangement now in force with the Adams Express Company for the general regulation of the transportation of property coming from the territory of the one into the territory of the other, and by which property received by the Adams Express Company, destined for points within the territory of the Southern, and property received within the territory of the Southern, destined to points within the territory of the Adams Express Company, or reached by its connections, is interchanged at specified points, and upon a basis of charge proportioned to the distance traversed in the territory of either. In case of such interchange of express matter within said territory, the express company originally receiving the same remains liable to the public for the value thereof until delivered to the consignee.

XVI.

Since the said understanding and arrangement the Southern Express Company has made such interchanges with the said Adams Express Company, and now makes the same, at Richmond, Lynchburg, and Norfolk, Virginia; Chattanooga, Tennessee; Paducah, Kentucky; and St. Louis, Missouri; and has not itself since then either delivered or received express matter north of such points, but the territory south thereof has been operated by the said Southern Express Company alone.

99 XVII.

By this arrangement the said express companies have been enabled to extend to the public the advantages and facilities of a continuous and most speedy line of transportation for express matter through the several States in which the said express companies carry on their business; and by the aid of other responsible express companies throughout the entire United States, under a single bill of lading, assuring a safe delivery of such express matter over all the connecting lines upon which it is carried to its destination.

XVIII.

The said Southern Express Company now owns and controls an express business properly and most expeditiously to be conducted

over the said defendant's railway sufficient to guarantee to said defendant tolls or earnings in the future as great or greater than those heretofore paid it as aforesaid, to the like pecuniary benefit of defendant, as it has heretofore received.

XIX.

Your orator would further show that, according to the usage and business of express companies, your orator has provided wagons and horses, drivers, iron safes, and other conveniences with which it collects and delivers on the trains of defendant express matter, using its own means, agencies, and appliances alone about the same until the same is actually delivered on the defendant's trains, and likewise using solely its own means and agencies in transporting and delivering such freights after they leave defendant's trains. And your orator would further show that it frequently has occasion to forward over the defendant's line immense sums of money, for which the defendant, having its property heavily mortgaged
100 to secure existing debts, affords no adequate or prompt security or indemnity in case of loss; and so the safety of your orator and the defendant, as well as their convenience, has demanded, and the defendant, according to the usage of railroad traffic in such cases, has accorded, the means and facilities to your orator of forwarding such sums of money in the special care and custody of its own agents; and otherwise your orator would be practically denied the opportunities of safe transportation of said sums of money over defendant's line, intended by the creation of defendant as a common carrier for the public to be afforded to the public.

XX.

Your orator would further show that its interest and the preservation of its valuable property and good will demands that it shall continue to have and enjoy the means and facilities aforesaid heretofore by the defendant accorded as aforesaid; and for the use and enjoyment thereof your orator is always ready and hereby offers to pay such just and reasonable compensation and to conform to such just and reasonable rules and regulations as may be lawfully required and imposed by the defendant. Your orator is advised and believes, and therefore charges, that, by reason of the premises hereinbefore recited, the duty is now imposed upon the defendant to always afford your orator, as one of the public, the means and facilities upon its railway of forwarding and transporting, in the manner established as aforesaid by the usage of the express business, upon reasonable terms and under reasonable regulations, its express matter and messengers.

101 XXI.

Your orator would further show that notwithstanding it is the long-established custom of railroad companies to afford to companies and individuals engaged in the express business the means and

facilities of forwarding in the passenger trains, under the special care of their own messengers and agents, their express matter; and notwithstanding the defendant has heretofore according to such usage uniformly accorded your orator the means and facilities aforesaid required in its business, and is yet able to do so, and notwithstanding, as your orator is advised and believes, it is not within the powers of defendant to engage in the express business, the nature and character whereof is explained in the description of the powers of your orator as set out in paragraph I of this bill.

Yet the defendant, intending and scheming to appropriate unlawfully and unjustly to itself the valuable business and property of your orator along its line of railroad, and to wholly exclude your orator therefrom, has given notice to your orator in words as follows, to wit:

"MEMPHIS AND LITTLE ROCK RAILROAD, AS REORGANIZED,
"LITTLE ROCK, ARK., *June* 2, 1880.

"M. J. O'BRIEN, Esq.,
"*Gen'l Supt. Southern Express Co., Memphis, Tenn.*

"DEAR SIR: Notice is hereby given you that the Memphis and Little Rock R. R. Co., as reorganized, has determined to transport all express matter and transact all express business on its own account, and through and by its own officers and agents, on and after the 14th day of June instant, in its own cars and on and
102 over its own roads; and that any and all contracts or arrangements which may exist between this company and the Southern Express Company will terminate on the said 14th day of June. We shall be glad to receive, transport, and deliver any express matter you or your company may think proper to entrust to us at reasonable rates and in conformity to law.

"Very truly, yours, (Signed) R. K. DOW,
"*President.*"

XXII.

And your orator avers that unless restrained by this honorable court the defendant will on the 14th day of June proximo carry its intention into effect, and will exclude your orator and its business from its, defendant's, trains, and will deny thereafter to your orator the means and facilities of conducting its business over the lines of defendant's road, and thenceforward will afford to its own express organization exclusively the means and facilities of doing express business upon its line of railroad.

XXIII.

Your orator further avers that successive actions at law to be brought upon daily tenders of express matter to the said defendant, and its daily refusals to transport the same would involve your orator in a multiplicity of litigations, which it has not the ability to institute or prosecute on every occasion and in every county when and where such tenders and refusals should take place; and that

such litigations would be valueless in point of recovery to said Southern Express Company, and would not protect its right on behalf of the public to have its express matter carried on the same and equal terms with the Union or any other express company;
103 and that such exclusion and ejectment, if it is permitted to take place, will not present the case of a single and temporary disturbance of the business of the Southern Express Company, but from its very nature will constitute a permanent, perpetual, and irreparable injury thereto, and the entire loss within the localities designated of its good will, business, reputation, and property therein, and would within the same localities permanently prevent it from accomplishing for the public the specific objects for which the said Southern Express Company was organized and perfected; and that the said Southern Express Company is remediless in the premises at and by the course of the common law, and that the common law does not and cannot afford so adequate and perfect a remedy herein as it is within the jurisdiction and province of a court of equity to afford.

XXIV.

And your orator further says, as it is advised and believes, and therefore charges, that the said defendant is a public corporation created by the Legislature of the State of Arkansas, by aid of material assistance afforded by it and its municipalities as is hereinbefore said for the public good, and that its charter imposes upon it the duties and obligation of a common carrier, and that among such duties and obligations is the duty of receiving and carrying express matter and freights for all persons upon the same and equal terms, and that such duty is due to every citizen and in an equal measure to each, and that the public has a correlative right to demand and receive transportation for all of its express matter, whether tendered personally or by a representative, upon the same terms and conditions as such matters and freights are carried for others, and that the defendant has no lawful right to refuse to perform its duties or to discharge its obligations in this regard, but is bound to serve all with indifference and equal readiness, and cannot consent to
104 carry for one and refuse to carry for another, or exercise, either directly or indirectly, unreasonable discrimination in terms, facilities, or accommodations, or deprive any portion of the public of its common right in that regard.

XXV.

Your orator is advised and believes, and therefore charges, that it is the duty of the defendant to afford to your orator precisely the same means and facilities and opportunities of engaging in the express business along the defendant's road that it afford- to its own express organization or service and upon the same terms.

XXVI.

Your orator further says that it is advised and believes, and therefore charges, that the proposed acts of the defendant in engaging in

the express business and excluding your orator and all others from engaging in the same is unlawful, and violative of the duties and obligations of the defendant; is inconsistent with the rights of the public, prevents lawful competition in business, is in restraint of trade, and creates a monopoly.

XXVII.

And your orator further says, as it is advised and believes, that the said defendant is a public corporation and a common carrier under the charter aforesaid, and exercises thereunder a public office for the public good, and that as such it is amenable to the jurisdiction of a court of equity, and that such courts are always open and ready to exercise their powers for the purpose of compelling such corporations and common carriers to keep within the limits which the Legislature has thought proper to prescribe for the exercise of their powers, and not to exercise powers beyond those which their
105 acts of incorporation confer, and to proceed by injunction to prevent illegal injury or destruction to the rights or property of others, and to prevent the execution of illegal contracts or illegal exclusion from the enjoyment of public rights in their fullest extent against all and every injury thereto, and that this court has power to protect the said Southern Express Company in the premises, and to compel the said defendant to exercise absolute impartiality to all who desire accommodations upon its railway lines.

Wherefore your orator prays—

1. That a preliminary or provisional injunction may be issued against the defendant, its agents, officers, servants, and employés, restraining them and each of them until the further order of this court, and particularly on the 14th day of June, 1880, and on any other day subsequent thereto, from interfering with or disturbing in any manner the enjoyment by the Southern Express Company of the facilities now accorded to it by the said defendant upon its lines of railway for the transaction of the business of the said Southern Express Company, and of the express business of the public confided to its care, and from interfering with any of the express matter or messengers of the Southern Express Company; and from excluding or ejecting any of its express matter or messengers from the depots, cars, and lines of the said defendant, as the same have been heretofore and are now enjoyed and occupied by the said Southern Express Company; and from refusing to receive and transport, in like manner as the said defendant is now doing over its lines of railway, the express matter and messengers of the said Southern Express Company; and from interfering with or disturbing the business of the said Southern Express Company, or its present relations with reference thereto with the said defend-
106 ant in any way or manner whatsoever, and so long as the said Southern Express Company shall be willing and ready and offer to pay according to its present contract rates with the defendant, or such rates as shall be equal to those paid by others who are afforded the same facilities.

2. That the said defendant may be decreed by this court to transport at all times the express matter, safes, and messengers of the said Southern Express Company by the same trains and with the same accommodations thereon and in its depots and stations as it may transport its own express matter, or as it may accord to itself, and that the said defendant may be decreed so to transport the express matter, safes, and messengers of the said Southern Express Company at and for the statutory tolls and compensation in that behalf by law provided; and that the said defendant may be decreed to make a reasonable rebate or reduction, to be fixed and determined by this honorable court, from its charges to the said Southern Express Company by reason of its performance of said accessorial service as above specified, so long as the said Southern Express Company shall offer to conform to all the reasonable rules and regulations of the said defendant, and to pay all lawful charges for the transaction of its said business.

3. That if any dispute or disagreement shall arise between the parties hereto during the pendency of this suit and before a final decree herein upon the question of what is a lawful or reasonable compensation to be paid by your orator to the defendant for the transportation of express matter, your orator may be permitted to bring the same by way of interlocutory application to this court for its decision, and that pending the inquiry thereon the preliminary injunction heretofore prayed may be continued to the same purport and effect and tenor as if the prayer for the same were here repeated.

107. That a permanent injunction may issue herein to the same purport and effect as is hereinbefore prayed in regard to said provisional or preliminary injunction.

That your orator may have such other relief or such further or different relief herein with its costs as to the court may seem meet.

To the end, therefore, that the said defendant may, if it can, show why your orator should not have the relief hereby prayed, and may, under its corporate seal and according to the best and uttermost of its knowledge, remembrance, information, and belief, full, true, perfect, direct answer make to each and all of the matters and things in this bill of complaint contained, and that as fully and particularly as if the same were here repeated paragraph by paragraph, and it were specially interrogated thereunto severally, may it please your honors to grant unto your orator a writ of *subpœna ad respondendum*, issuing out of and under the seal of this honorable court, to be directed to the said defendant, The Memphis and Little Rock Railroad Company, as reorganized, commanding it, on a certain day and under certain penalty to be therein inserted, to appear before your honors in this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, abide by, and perform such further order or decree herein as your honors shall seem meet; and also a

writ of provisional and a writ of perpetual injunction to the same tenor, purport, and effect as is hereinbefore set forth and prayed.

And your orator will ever pray, etc.

THE SOUTHERN EXPRESS COMPANY,
By H. B. PLANT, *President.*
F. E. WHITFIELD, *Sol. for Compl't.*

108 UNITED STATES OF AMERICA, *District of* ———:

On this 11th day of June, eighteen hundred and eighty, personally appeared G. W. Agee, to me known, who, being by me duly sworn, on oath says: That he is the route agent for the complainant in the foregoing bill, and has especial control of the complainant's business in the State of Arkansas, and as such is most fully advised of the matters in said bill; and that he has read the foregoing bill and knows the contents thereof; and that the same is true, except as to the matter stated on information and belief, and as to those matters he believes the same to be true.

GEO. W. AGEE, *R'te Agent.*

Subscribed and sworn to before me, this 11th day of June, 1880.
RALPH L. GOODRICH, *Clerk.*

109 United States Circuit Court, Eastern District of Arkansas.

THE SOUTHERN EXPRESS COMPANY
vs.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as reorganized.

Upon the service upon this defendant of the subpœna herein, and of a copy of this order, let said defendant show cause, before me, at Little Rock, on the 21st day of June, 1880, at 10 o'clock a. m., why a provisional or preliminary injunction should not issue herein, according to the prayer of the bill in that behalf, and why the plaintiff should not have such other or such further or different relief as to the court then and there may seem meet. In the mean time, and until the return day of this order, it is ordered that the said defendant, its agents, officers, servants, and employés, be, and hereby are, by this order, severally restrained from interfering with or disturbing in any manner the enjoyment by the Southern Express Company of the facilities now accorded to it by the said defendant upon its lines of railway for the transaction of the business of the public confided to its care; and from interfering with any of the express matter or messengers of the Southern Express Company; and from excluding or ejecting any of its express matter or messengers from the depots, cars, and lines of said defendant, as the same have been heretofore and are now enjoyed and occupied by the said Southern Express Company; and from refusing to receive and transport, in like manner as the said defendant is now doing, over its lines of railway, express matter and messengers of the said Southern Express Company; and from interfering with or disturbing the
110 business of the said Southern Express Company or its present relations with reference thereto with the said defendant

in any way or manner whatever; and from proceeding in any manner, on or after the 14th day of June instant, to refuse to permit the said Southern Express Company to continue the transaction of the said business over the lines of the defendant, on the same terms and conditions as are or may be permitted to the defendant's own express company or individuals for similar business.

Dated June 11, 1880.

HENRY C. CALDWELL.

Endorsed: Southern Express Co. *vs.* Memphis and Little Rock R. R. Co. Bill. Filed and writs issued June 11, 1880. Ralph L. Goodrich, clerk. Seward & Whitfield, sol's for compl't.

111 United States of America, Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 12th day of April, Anno Domini one thousand eight hundred and eighty, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on June 11, 1880:

THE SOUTHERN EXPRESS COMPANY
v.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as organized.

Upon the service upon this defendant of the subpœna herein, and of a copy of this order, let said defendant show cause, before me, at Little Rock, on the 21st day of June, 1880, at 10 o'clock a. m., why a provisional or preliminary injunction should not issue herein according to the prayer of the blli in that behalf, and why the plaintiff should not have such other or such further or different relief as to the court then and there may seem meet.

112 In the mean time, and until the return day of this order, it is ordered that the said defendant, its agents, officers, servants, and employés, be, and hereby are by this order, severally restrained from interfering with or disturbing in any manner the enjoyment by the Southern Express Company of the facilities now accorded to it by the said defendant upon its lines of railway for the transaction of the business of the said Southern Express Company, and of the express business of the public confided to its care; and from interfering with any of the express matter or messengers of the Southern Express Company; and from excluding or ejecting any of its express matter or messengers from the depots, cars, and lines of said defendant, as the same have been heretofore and are now enjoyed and occupied by the said Southern Express Company; and from refusing to receive and transport in like manner as the said defendant is

113 now doing over its lines of railway express matter and messengers of the said Southern Express Company, and from interfering with or disturbing the business of the said Southern Express Company, or its present relations in reference thereto with the said

defendant in any way or manner whatsoever; and from proceeding in any manner, on or after the 14th day af June instant, to refuse to permit the said Southern Express Company to continue the transaction of the said business over the lines of the defendant on the same terms and conditions as are or may be permitted to the defendant's own express service or to any other express company or individual for similar business.

Returned and filed June 21, 1880.

RALPH L. GOODRICH, *Clerk*,
By W. P. FIELD, *D. C.*

Upon which the marshal made the following return:

I have executed the within order, by delivering into the
114 hands of Rudolph Fink, general manager of the Memphis & Little Rock railroad, as reorganized, a true & correct copy of the same at Little Rock, in the eastern district of Arkansas, upon this 11th day of June, 1880.

JAMES TORRANS, *U. S. Marshal*,
By J. T. BROWN, JR., *Deputy*.

Service	2 00
Copy	75
Mileage	25
	3 00

115 And on June 21, 1880, as follows:

THE SOUTHERN EXPRESS COMPANY
vs.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as reorganized.

Comes the defendant, by B. C. Brown, Esq., its solicitor, and files herein its answer; and the motion of the complainant for a preliminary injunction herein, according to the prayer of the bill, having been brought on to be heard, and the parties being present by their counsel, and the court having duly considered the questions presented, after argument for the defendant as well [as] for plaintiff, doth hereby order that the defendant, its officers, agents, servants, and employés, be enjoined and restrained, until the final determination of this cause, from preventing the plaintiff's enjoying the same facilities in the conduct of its express business permitted to any other express company, or exercised by the defendant itself, on payment by plaintiff of reasonable compensation therefor.

116 Which answer is as follows:

In the Circuit Court of the United States for the Eastern District of Arkansas. In Chancery.

The answer of the Memphis and Little Rock Railroad Company (as reorganized) to the bill of complaint in this honorable court exhibited against it by the Southern Express Company.

Making all the necessary and usual reservations, this respondent,

for answer to said bill of complaint, or to so much thereof as it is advised it is material or necessary for it to make answer unto, answering says:

That it knows nothing of the corporate existence, capacity, or powers of the complainant, and if they, or any of them, be or become material for its defence, it asks that complainant be required to make strict proof thereof.

117 Defendant admits that express companies have for some years past, by the permission of railroad companies, been engaged in carrying parcels, &c., but it denies that so far as itself is concerned it is either unable or unwilling to carry for the public all articles such as have been heretofore carried by express companies. On the contrary, it avers that it is both able and willing to furnish to the public all the facilities in the transportation and delivery of such articles as have been furnished by the complainant, and it says that it has organized its own express department, and is now actually carrying and delivering such matter between points on its own line and to connecting railroads for carriage and delivery at points beyond its line. And, as shown by complainant's own statement, this is all that complainant can do, as it cannot

118 carry a package from Little Rock to Louisville, Kentucky, except by transferring the same for carriage over part of the route and for delivery at Louisville to another company. Before reading the bill respondent had known something of the history of the express business, and had supposed that the companies conducting it had considerable capital invested in the business. But the statement in the third paragraph of the bill suggests two ideas that may not be irrelevant to the relief sought:

1. If the respondent can be compelled to provide a car or car space on its passenger trains for complainants and to transport its messengers and other agents free, it can be compelled to do the same for the other 159 express companies which complainant says exist in this country, and for as many more as under such an interpretation of the law would spring into existence. This at once proves the absurdity of complainant's claim.

119 2. That while dwelling lovingly upon the large aggregate capital of the 160 express companies, and claiming that their large capital gives better assurance of payment in cases of loss than is afforded by railroad companies, complainant carefully abstains from saying anything about its own capital or responsibility; that its responsibility is not very great to citizens of the State in which it is now insisting upon its right to do an exclusive express business will be seen when the fact is known that the whole value of the property returned and listed by it for taxation in this State is, as respondent is informed and believes, less than one thousand dollars.

Respondent can safely say that its own responsibility exceeds that sum by many thousands of dollars; and it further says that no just or admitted claim or demand against it is unpaid.

Respondent supposes the express companies have done large business for the Government and for the public.

120 But it says that on its own line it can do for either the

Government or public all that has been or can be done by plaintiff in the carriage or delivery of packages of freight, large or small; that it can carry small and valuable packages, either of money or of other articles, as carefully and safely as complainant can; that it can carry perishable articles with as great speed as complainant; that it can accept freights with the charges of the shipper attached, and can transport and deliver on payment of the charges and return the charges to the consignor; that by the aid of other railroads it can accept freights, large and small, valuable or of trifling value, to be carried between points only accessible by two or more railroads upon one contract, and it believes that all other railroads in the United States can and are willing to do the same. In short, save for the collection of debts, it can do all that complainant claims to do as safely and as expeditiously as complainant
121 can, and it will hardly be pretended that for its collection business complainant needs or is entitled to demand from defendant the facilities and preferences which it seeks by its bill. If it can, every other collection company or agent can claim the same privileges, and as they are numbered by hundreds, defendant had better surrender to them its property.

By its charter the State of Arkansas granted to respondent "the exclusive right of transportation or conveyance of persons, goods, merchandise, or produce," over its railroad, and, being able and willing itself to do such carriage and conveyance, it knows no principle which justifies complainant in seeking to deprive it of the right given to it by the State which created it.

Respondent knows nothing of the contracts between complainant and the Adams Express Company, but says it had no lot or part in such contracts, and, as these contracts cannot affect it, has no reason to deny the statements in this behalf.

122 Respondent admits that it is a corporation created by the laws of Arkansas; that it does own and operate as a common carrier a railroad between Little Rock and a point on the west bank of the Mississippi river opposite Memphis, Tennesee; that it is equipped with cars necessary to do the business of complainant and other shippers, and that the former railroad company did receive some small public assistance, particularly the right to exercise in case of necessity the State's right of eminent domain, a right, however, which this respondent has never used, as it has always purchased the rights of way it needed.

It admits that since its organization on May 1, 1877, it has permitted complainant to conduct its business over its road in the manner it by this bill seeks to perpetuate, but it denies that it has done so by reason of any contract with complainant. On the contrary, respondent has constantly declined to enter into any contract, either with complainant or with any other express company,
123 although complainant and others have repeatedly applied to respondent for such contracts. Respondent so declined, desiring to be at all times prepared to take the express business in its own hands, and to do it itself, as has been done successfully by many other railroads in the country, notably by the Baltimore and Ohio,

the Atlantic, Mississippi and Ohio, and by the Little Rock and Fort Smith, or, to be able to farm out such business to better advantage. The success of these roads demonstrates the falsity of complainant's claim that express companies alone are able to do this business to the satisfaction of the public. And the fact that complainant has never sought to establish its business on the Little Rock and Fort Smith railroad shows, that with all its apparent zeal for the interest of the public, it only seeks to condemn to its own use the roads over whose lines the business will pay, and that it is willing to leave that portion of its dear public who reside upon smaller and disconnected roads to the tender mercies of the
124 railroad companies. Railroad companies, upon pain of forfeiture of their charters, may be compelled to run their trains and to carry for the public, but whenever a route proves unremunerative express companies may abandon it at pleasure.

In permitting complainant to do its business on its road, repondent acted under the provisions of its charter, which provies, "the said company may, when they see fit, farm out their right of transportation on said road." Thus complainant merely represented respondent, and had no privilege over its road, except such as were tacitly accorded to it by respondent. The compensation received by respondent from complainant was quite small when compared to the rates charged by respondent to the general public, so that the business proved very profitable to complainant, as it admits. On account of the low terms enjoyed by the complainant, and the rapid material development of the country through which respondents' road passes, and of the States whose commerce is reached by
125 the road and its connections, respondent had reason to expect a considerable increase of revenue from complainant's business, but its returns have almost remained stationary, showing either that complainant has not worked faithfully in respondents' interest or has failed to make proper returns. The actual sums paid by complainant to respondent per annum have but little more than would accrue to respondent for fare of its messengers and carriage of its safes, if regular fare and rates had been charged. As evidence that complainant has not worked for respondent's interest, or has made false returns, respondent states that the payments made by complainant to respondent in 1879 only exceeded the payments during 1878 by a little over seventeen dollars. The nature of the express business is such that respondent cannot overlook and control it when in the hands of another company without employing as much additional force and going to almost as much additional expense as would be required to conduct such business on its
126 own account. And respondent says that this of itself is a good and sufficient reason for taking and doing the business itself, and for refusing to allow the complainant to continue to do it.

Respondent denies that complainant has made any investments upon or relying upon any promise or agreement, express or implied, of this respondent. It says the fact is that when it purchased the road it now operates, May 1, 1877, it found complainant on the road with all its investments made and its agencies and business routes

established, and that respondent tacitly permitted complainant to continue its business over its road. But it is now able, ready, and willing to do the express carrying business over its road for itself and for the benefit of its own stockholders, and desiring to take the business into its own hands, it gave complainant the notice mentioned and copied in the bill. It repeats here what it said in that notice: that it is ready and willing to carry for complainant in the same manner and upon the same terms that it carries for all other shippers.

127 It submits that complainant has no privilege or right which is not common to all shippers, and it repeats that what it does for others it will fully and in its proper order do for complainant. None of the privileges claimed by complainant are accorded by respondent to any other shipper, and no other even asks such privileges. Respondent denies that it must give complainant the same privileges and facilities that it enjoys itself, for that would be to surrender to complainant a part of its corporate rights and privileges, and also to surrender to complainant the control of a part of its cars and business. All that it is required to do for complainant is to receive and carry for it in the same manner and at the same rates it does for others. In the conduct of its business, express and all other, it receives freights from the shipper, giving therefor a receipt or bill of lading; takes the freight into its own possession, loads it itself into its cars, carries it in its own custody, and at the place of destination delivers it to the consignee. All this it is willing, has

128 offered, and again offers, to do for complainant.

Returning to the powers claimed by complainant in the first paragraph of its bill, and to its claims that railroads cannot do the business mentioned, respondent denies each and every allegation to that effect. It says that the business of accepting freights for transportation between points only accessible over two or more railroads is and has been an established business of the railroad companies of the Union for many years, and that such transactions are now of daily occurrence. Nothing is more common than for a railroad terminating in New York to accept freights to be carried to San Francisco or other remote points of the Union, and to give to the shipper the only contract for such carriage which he receives. And the history of the country proves that such contracts are in almost every instance performed to the letter. In the season for cotton shipments respondent issues many such bills of lading daily for cotton delivered to it to be transported to New York and New Orleans.

129 Such cotton must pass through the hands of several roads to reach its destination; yet so well is the responsibility of respondent and its connecting railroad lines known that such bills of lading are freely accepted as security and advances made by the banks of the city and country upon the cotton so shipped and in the hands of respondent and its connecting lines of railroad. And there has never been a day when the shipper of small and valuable articles could not have entrusted them to respondent if he had chosen, and, in fact, many such packages were sent by freight;

that is, by the railroad companies, in preference to the express companies, on account of the lesser charges made by the railroad companies. As to the carriage of live animals, the railroad companies, by reason of their lesser charges, have long since practically monopolized the business, the instances in which express companies have carried live animals being few and rare.

That respondent is authorized to make contracts for the
130 delivery of freights on all points whether accessible only by two or more railroads, and whether in differest States or not will be seen by examining the act of Congress, to be found in section 5258 of the Revised Statutes of the United States. If any addition to the powers granted respondent by the State were needed, this act furnishes it.

Respondent denies the complainant has paid it the sum stated in the bill. It says that since its organization complainant has only paid it the sum of $17,985.27.

And now having fully answered, respondent demurs to the said bill of complaint, and for cause of demurrer says that there is no equity in said bill.

And it prays to be hence discharged with its reasonable costs.

B. C. BROWN,
For Defendant.

131 UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

John W. Goodwin, being sworn, says: That he is, and has been since its organization, the secretary and treasurer of the defendant, and that the facts stated in the foregoing answer as of knowledge of the defendant are true, and that those stated on information and belief he believes to be true.

JOHN W. GOOODWIN.

Sworn to and subscribed before me, this 21st day of June, 1880.
[L. S.] CALDWELL BRADSHAW,
Notary Public.

Endorsed: Southern Express Co. *v.* The Memphis and Little Rock Railroad Co. (as reorganized). Answer of Defendant. Filed June 21, 1880. Ralph L. Goodrich, clerk. B. C. Brown.

132 And on September 13, 1880, as follows:

SOUTHERN EXPRESS CO.
v.
MEMPHIS AND LITTLE ROCK RAILROAD CO.

Comes the complainant, by F. E. Whitfield, Esq., its solicitor, and comes the defendant, by B. C. Brown, Esq., its solicitor, and the parties herein file their stipulation, which is ordered by the court to be spread at large upon the records, as follows:

In the Circuit Court of the United States for the Eastern District of Arkansas. In Chancery.

THE SOUTHERN EXPRESS COMPANY
v.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY.

In the above case it is hereby stipulated:

1. The Southern Express Company, complainant, may file replication to the answer of defendant at any time within thirty days from the date hereof.

2. That the time for taking testimony in said cause be ex-
133 tended to the 1st day of April, 1881, and that either party may, upon proper notice, take and file the depositions of witnesses up to and until that date.

3. That the cause be set down for hearing at the April term, 1881, of said court upon the pleadings and testimony and exhibits with either, and upon the general demurrer of defendant to complainant's bill reserved in the answer.

4. That all testimony taken by either party in the cause of the Southern Express Company *v.* The St. Louis, Iron Mountain R. R. Co., pending in the circuit court of the United States for the eastern district of Missouri, may be used in and upon the hearing of this cause so far as it may be applicable, but copies of all such testimony, which either party desires to use, shall be copied either in writing or print and filed in this court, and come before or by the said first day of April, 1881.

5. All technicalities and formal irregularities not going to the merits of the cause are hereby waived.

134 6. This stipulation shall be filed and made part of the record of the cause.

Signed and agreed September 1, 1880.

F. E. WHITFIELD,
Counsel for Plaintiff.
B. C. BROWN,
Counsel for Defendant.

And the said complainant, by its said solicitor and by consent of parties, enters in short upon the record here, its replication to the defendant's answer.

And on September 17, 1880, replication was filed; which replication is as follows:

135 *The Replication of the Southern Express Company, Plaintiff, to the Answer of The Memphis and Little Rock Railroad Company, Defendant.*

UNITED STATES OF AMERICA, *District of Arkansas.*

In the United States Circuit Court.

This repliant, saving and reserving to itself all and all manner of

advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith: That he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant without this; that any other matter or thing whatsoever in the said answer contained, material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

F. E. WHITFIELD,
Sol. for Pl'ff.

Endorsed: The Southern Express Company *vs.* The Memphis & Little Rock R. R. Co. Replication. Filed Sept. 17, 1880. Ralph L. Goodrich, clerk. Whitfield & Young, Corinth, Miss., attorneys for plaintiff.

136 UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

Be it remembered, that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 11th day of April, anno Domini one thousand eight hundred and eighty-one, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

137 And on April 21, 1881, as follows:

THE SOUTHERN EXPRESS CO.
v.
THE MEMPHIS & LITTLE ROCK R. R. CO.

Comes the defendant, by B. C. Brown, Esq., its solicitor, and files herein its motion to dissolve the injunction; which motion is as follows:

Motion to Dissolve Injunction.

United States Circuit Court for the Eastern District of Arkansas.

SOUTHERN EXPRESS CO.
v.
THE MEMPHIS & LITTLE ROCK RAILROAD CO., as reorganized.

Comes the defendant, by B. C. Brown, its solicitor, and moves the court to dissolve the injunction heretofore granted herein.

B. C. BROWN,
Sol. for Def't.

(Endorsed:) Filed April 21, 1881.

138 And on May 12, 1881, the following proceedings were had:

THE SOUTHERN EXPRESS CO. *v.* MEMPHIS & LITTLE ROCK R. R. CO.

Comes the complainant, by Whitfield and Young and W. S. Curran, its solicitors; and files herein its supplemedtal bill of complaint; which supplemental bill of complaint is as follows:

139 In the Circuit Court of the United States for the Eastern District of Arkansas. In equity.

THE SOUTHERN EXPRESS COMPANY
vs.
THE MEMPHIS and LITTLE ROCK RAILROAD COMPANY "as reorganized."

To the judges of the circuit court of the United States for the eastern district of Arkansas:

The Southern Express Company, a corporation created under the laws of the State of Georgia, brings this its supplemental bill of complaint against the Memphis and Little Rock Railroad Company, a corporation created under the laws of the State of Arkansas, and now engaged in business in the eastern district of said State of Arkansas, owning and operating therein a railroad as a public highway.

And thereupon your orator complains and says:

140 I. Since the filing of the original bill herein, which is yet depending, and the service upon the defendant therein of the subpœna therein, certain other and further facts have transpired, which this plaintiff is advised and believed it necessary, right, and proper, should be brought before this court by a supplemental bill, or a supplement to the original bill herein; and it therefore prays leave to file this as a supplemental bill, or as a supplement to said original bill, under and pursuant to the rules and practice in such case made and provided.

II. The plaintiff refers to the original bill herein, reiterates the matters and things therein alleged, and makes said bill and the pleadings thereto, as well as the orders, writs, and other proceedings of this court thereon, a part of this bill, as fully as if the same were here n words set out.

III. The plaintiff avers that, after the filing of the original bill herein, to wit, on or about the 14 June, 1880, the defendant
141 engaged in the express business over its line of railroad between the city of Little Rock, Arkansas, and the city of Memphis, in Tennessee, and in said cities has established express offices, agents, wagons, horses, and other express instrumentalities for the collection and distribution of express matter in said cities, and for the conduct of said business over the line of its railroad, and still is engaged in said business at said cities and over said railroad.

IV. The plaintiff, relying upon its legal rights, more fully set out in its original bill, and upon the orders of this court made thereupon, also continued to engage in the express business at said

cities of Little Rock and Memphis, and upon the line of the defendant's railroad.

V. About the time the defendant engaged in the express business the St. Louis, Iron Mountain and Southern Railroad Com-
142 pany, owning and operating a line of railroad in the State of Arkansas, also engaged in the express business over its road, and at Little Rock and other cities thereupon, and still is so engaged.

VI. The plaintiff is informed and believes, and therefore charges, that at the time they engaged in the express business as aforesaid the said two railroad companies had come under and subject to the control or superior management of the same person or persons, whereby the said companies were confederated and combined together to exclude the plaintiff from their respective lines of railroad; and that thereupon placed their respective express interests and business under the management of the same persons, and entered into traffic arrangements with each other, whereby their said express business is conducted as if by one company.

VII. Since the defendant has engaged in the express busi-
143 ness as aforesaid, being restrained by the orders of this court, made upon the original bill herein, from executing its original unlawful purpose and intention of excluding the plaintiff from its railroad, it has continuously resorted to unlawful, unjust, arbitrary, and unreasonable expedients to circumvent the force and effect of the orders and decrees of this court, made on the original bill as aforesaid; and by the imposition upon the plaintiff of unlawful, unreasonable, unjust, and discriminating terms, conditions, and restrictions not imposed upon itself, engaged in the express business to destroy the plaintiff's business and competition on the defendant road, and to accomplish indirectly that exclusion forbidden by the orders of this court in this cause.

VIII. The plaintiff avers that the defendant has refused and still refuses to allow the express matter of plaintiff to be trans-
144 ported upon the defendant's trains except upon the condition that the plaintiff comply with and submit to said terms, conditions, and restrictictions, which are as follows, to wit:

IX. The defendant demands that the plaintiff shall pay for the transportation of its express matter upon defendant's road, the following rates, to wit:

Packages of 100 lbs. or more, per 100 miles, 75c. per 100 lbs.

Packages of 50 lbs., per 100 miles 70 cents.

Packages of 20 lbs. per 100 miles, 40 cents.

Which rates are respectively 15 cents, 28 cents, and 40 cents per ton per mile, and for distances less than 100 miles the defendant demands much mor exhorbitant rates, in some cases amounting to as much as $1.50 per ton per mile.

X. The plaintiff complaining thereof, avers that these rates are unreasonably exhorbitant, and many times greater than a reasonable compensation, and much greater than the compensation heretofore charged by the defendant, or usually charged by railroad
145 companies for like service. The plaintiff avers that it is

familiar with the tariff of rates of the prominent railroads of the United States, and avers that the average adequate compensation, meaning thereby a reasonable profit added to the cost of carriage upon said roads, does not exceed three cents per ton per mile upon freight trains, and it is further advised and believes, and so charges, that the additional cost of transportation on passenger trains, if any, does not exceed fifty per centum upon the cost of transportation upon freight trains.

XI. Plaintiff further avers that the defendant is at no expense for handling, storing, loading and unloading, care, custody, or risk of plaintiff's express matter, all of which service is performed by the plaintiff for itself, according to the usage established by railroad and express companies.

XII. Also the plaintiff avers that said rates are unreasonable in somuch as the rates for small packages are proportionately much higher than the rates for larger packages.

146 [XIII.] The plaintiff, further complaining thereof, says that said rates are unreasonable, unjust, and discriminating to and against the plaintiff, because it avers the same are higher than the rates imposed by the defendant upon itself or upon the public other than the plaintiff for the transportation of express matter over its railroad, for it avers that whilst the defendant's charge on its railroad to the plaintiff for transportation are the rates above mentioned, its charges to itself and the public, excluding plaintiff, are said rates less the value of the collecting, delivering, storing, hauling, handling, and risk, and other service, commonly called "accessorial" service, performed thereabout.

XIV. Plaintiff further avers that the defendant engaged in the express business, as aforesaid, pays to itself, in its legitimate capacity as a railroad carrier, greatly less than, and, as plaintiff is informed and believes, not more than, one-half the above rates for the same measure and facilities of conducting the express business now enjoyed by plaintiff.

147 XV. Plaintiff further avers that by a long and universally established usage constantly observed, and not as a matter of convenience or source of profit only, but also as a necessary precaution for the safety and dispatch of its business, express companies make use of bags, trunks, packing chests, safes, and bales, within which a number of articles or parcels, destined to the same point, are packed and forwarded as single packages to a single address, sealed or otherwise secured, as the circumstances demand or admit, and which are retained in its personal custody of, and handled exclusively by, the employees of the express companies. The plaintiff has always made use of such instrumentalities upon defendant's road and elsewhere, yet upon such bags, trunks, packing chests and bales, the defendant demands and exacts of the plaintiff these rates, that is three times as much as its above-mentioned tariff for like bulk, weight, and character of express matter, which has not been packed together, as aforesaid by plaintiff; and upon safes and

148 tin boxes the defendant exacts of the plaintiff, six times said

rates; that is, six times the amount charged upon goods, wares, and merchandise, in other than packed parcels.

XVI. These bags, trunks, packing chests, safes, and bales are sometimes packed by plaintiff, and sometimes received by plaintiff already packed and sealed, and are retained in the personal custody of, and exclusively handled by the plaintiff's employees, according to the established usages in conducting the express business, and marked and consigned to a person and place designated by plaintiff, and are in all respects transported as a single package from a single shipper to a single consignee.

XVII. Plaintiff is advised and believes, and therefore charges that the said rates exacted as aforesaid on bags, trunks, packing chests, safes, and bales are illegal, extortionate, unjust, and discriminating.

XVIII. The plaintiff avers that the defendant, whose corporate powers authorize it to be a carrier by rail only upon a line of railroad herein located, have not fixed a tariff for the transportation of express matter by rail or upon their railroad, and
149 though requested by the plaintiff, have wholly refused so to do; but the defendant engaged in the express business as aforesaid, for the purpose of excluding the plaintiff from its road, and from competition with its own express department, has fixed a tariff of charges for its own express department, which includes both railroad and express service—that is to say, includes compensation for transportation afforded by the defendant as a railroad carrier, and also compensation for the collection and delivery by the use of horses, wagons, drivers, and officers, and other service peculiar to express carriage, and not pertaining to ordinary railroad freight, and demands that the plaintiff, though receiving from the defendant nothing but the railroad transportation which alone it may lawfully render, shall pay therefor according to said tariff, and refuses to abate therefrom to the plaintiff the reasonable value of the service included in said tariff, but not performed for plaintiff.

150 XIX. The defendant insists that plaintiff shall open and disclose to the inspection of defendant's employees the contents of plaintiff's covered express matter, as an arbitray right, constantly to be exercised, although such matter be free from just or reasonable suspecion of possessing dangerous or other obnoxious qualities.

XX. The plaintiff, complaining thereof, as illegal, unjust, and discriminating, avers that the defendant has an arrangement or agreement with the St. Louis, Iron Mountain and Southern Railroad Company, and with the Pacific Express Company, by which upon express matter shipped by its (defendant's) own express to be delivered to said St. Louis, Iron Mountain and Southern Railroad Company, or to said Pacific Express Company; or received from either of said last-named companies, to be transported over defendant's road, the defendant makes a lesser charge than that fixed by the aforesaid pretended tariff; and a lesser charge than it makes to plaintiff for the same weight and character of express matter car-
151 ried the same distance under like circumstances; and the

defendant does not require such express matter as is received on its road from said two companies to be opened and inspected by its employees.

XXI. The plaintiffs, complaining thereof, further avers, that although it receives from any one of the public, other than the plaintiff, various parcels of express matter not secured together, but consigned to the same destination or address, and transports the same for a compensation upon the gross weight thereof, the same as if such several parcels constituted only one, yet the defendant refuses to receive in like manner the express matter of plaintiff, consigned to the same destination and address, and to charge upon the gross weight thereof, but demands that plaintiff shall pay upon its aggregated express matter according to another and higher tariff, assessing each article as if the same was a single and only shipment.

XXII. The plaintiff, complaining thereof, further avers, that
152 the defendant unlawfully and unjustly discriminates in favor of and gives preference to itself against and over the plaintiff, in according the means and facilities of conducting an express business over its line of road, requiring of plaintiff, requiring of and imposing upon the plaintiff, the aforesaid conditions and restrictions not required of or imposed upon its own express service, and granting to itself in the conduct of all express facilities conveniences and preferences not granted to plaintiff, whereby the plaintiff is greatly prejudiced in competing with defendant for the public patronage. And the defendant, wholly ignoring the plaintiff's business upon its road, refuses to negotiate or have business relations with plaintiff in its character as a railroad company, did refuse to recognize plaintiff, except as a patron of itself in its capacity as an express company, and refuses to carry the plaintiff's express matter, except subject to the inspection, control, and arbitrary rules, orders, or judgment of the joint employees of the defendant and
153 said St. Louis, Iron Mountain and Southern R. R. Co., who are wholly disconnected with the conduct and management of the corporate functions of said railroad companies, and who are, personally and in interest, hostile to the interest and welfare of plaintiff.

XXIII. The plaintiff further avers that it has been constantly and unremittingly protesting to the defendant against the matters herein complained, and has been unremitting in its efforts amicably to have corrected the said matters of complaint; and recently it supposed the most grievous of said matters were amicably adjusted under an arrangement to be in force at least during the pending of the suit on the original bill herein; said arrangement was made on the basis of a proposition submitted voluntarily by one Aiken, superintendent of the joint express departments of defendant and said St. Louis, Iron Mountain and Southern R. R. Co., and by him declared to be fair and reasonable, and such as the railroad companies aforesaid should concede; and under the spirit and force of the un-
154 derstanding then had with the said Aiken the relations between plaintiff and defendant promised to be endurable, but within the last thirty days the defendant has recommenced its mode

of annoying and embarrassing plaintiff by the renewal of the onerous rates, conditions, regulations, and restrictions hereinbefore complained of. Whereupon the plaintiff sought this relief without delay.

XXIV. The plaintiff avers that the matters herein complained of are of daily occurrence, and by reason thereof plaintiff's business at said cities of Little Rock and Memphis and along the line of defendant's railroad, and the value thereof, is greatly impaired, for which plaintiff has no adequate remedy at law; that actions at law for each of the said grievous acts, and the repetitions thereof, would involve a multiplicity of suits.

XXV. Wherefore the plaintiff prays that this bill may be filed as a supplemental bill, or as a supplement to the original bill
155 herein, and that by a modification of the injunction granted upon the original bill herein, or by an *alias* writ of injunction further issuing from this court, the defendant, its officers, agents, and employees, be severally restrained—

From demanding of plaintiff for the transportation of its bags, safes, packing trunks, chests, and boxes a higher rate than upon other freights of like weight and bulk.

From charging plaintiff a higher rate than it charges for similar express matter received from or delivered to the custody of the St. Louis, Iron Mountain and Southern Railroad Company's Express, or the Pacific Express Company.

From discriminating against the plaintiff in favor of itself, or any other express company or person, in the matter of rates, traffic arrangements, terms, conditions, rules, or regulations touching the transportation of express matter on the defendant's railroad.

From charging the plaintiff a proportionately higher rate upon small packages than upon large packages.

156 From charging the plaintiff for the transportation of its express matter otherwise than upon the gross weight of all of its matter, consigned from the same point to the custody of plaintiff, or plaintiff's agent, at the same destination.

From charging plaintiff other than at a rate which shall be a strictly reasonable compensation for transportation upon defendant's railroad, and the service necessarily performed by defendant in connection therewith.

From charging the plaintiff for the transportation of its express matter a higher rate than that ascertained by deducting from the tariff fixed to the public by defendant's express department the fair value of the services rendered by the plaintiff.

And from charging the plaintiff more than remains after deducting from said rates the fair value of the services in the transportation of express matter usually and according to custom performed by express companies, and not usually performed by railroad companies in the transportation of freight, or by the defendant
157 in the transportation of its general freight carried by it as a railroad carrier.

From charging the plaintiff a higher rate than defendant's express

department pays defendant's railroad department for express facilities.

Plaintiff prays that a preliminary injunction issue to like tenor and effect, and for such other and further or different relief as, the premises considered, may to the court seem meet and proper.

And the plaintiff further prays that if it shall appear to the court that the matters herein recited are not properly presented and cognizable in the form of a supplemental bill, or supplement to the original bill, then the same may be filed as a petition filed in the aforesaid suit, pending as aforesaid; and that plaintiff have such relief in respect to the matters complained of as to the court seems meet and proper.

XXVI. To the end, therefore, that the said defendant may, if
158 it can, show why the plaintiff should not have the relief herein prayed, and may, under its corporate seal, and to the best of its knowledge, full, true, and perfect answer make to each and all the matters and things hereinbefore alleged, may it please your honors to grant unto the plaintiff a writ of *subpœna ad respondendum*, issuing out of and under the seal of this honorable court, to be directed to the said defendant, "The Memphis and Little Rock Railroad Company, as reorganized," commanding it, on a certain day and under a certain penalty to be therein named, to be and appear before your honors in this court, and then and there full, true and perfect answer make to all and singular the premises, and to stand to, perform, and abide by such further orders and decrees as to your honors may seem meet.

And plaintiff will ever pray, &c.

F. E. WHITFIELD,
Pl'ff's Solicitor.

UNITED STATES OF AMERICA, } ss:
District of West Tennessee, }

Personally appeared H. C. Fisher, who, being duly sworn, says: He
159 is the superintendent of the Southern Express Company, and as such has the fullest knowledge of the matters charged in the foregoing bill of complaint; that he has read said bill, and knows the contents thereof; and that the same is true to his own knowledge, except the matters herein stated to be on information and belief, and as to those matters he believes the same to be true.

H. C. FISHER.

Subscribed and sworn to before me, this May 11th, 1881.

M. B. TREZEVANT,
U. S. Commissioner, Dist. of West Tenn.

Filed May 12, 1881.

RALPH L. GOODRICH, *Clerk.*

And on May 23, 1881, the answer to said supplemental bill was filed, which is as follows:

160 In the Circuit Court of the United States for the Eastern District of Arkansas. In Chancery.

THE SOUTHERN EXPRESS COMPANY, Complainant,
vs.
THE MEMPHIS, AND LITTLE ROCK RAILROAD COMPANY, as reorganized, Defendant.

The answer of the Memphis and Little Rock Railroad Company, as reorganized, to the supplemental bill or petition in this cause and court exhibited against it by the Southern Express Company.

This respondent, making all the usual and necessary reservations, for answer unto said supplemental bill or petition, or to so much thereof as it is advised it is necessary or material for it to make answer unto, answering, says:

I. That it reiterates each and every statement, allegation, matter, or thing in its original answer to the original bill in this
161 cause contained, and makes, so far as may be necessary or proper, its said answer a part of its answer hereto.

II. It admits that on or about the day stated it did commence the carriage of the class of freights which, for distinction, is usually called "express matter," over its road, and that to increase its said business it did provide and now keeps, in the cities of Little Rock and Memphis, offices—one in each city; agents—one in each city; wagons and horses—the latter to be used and now used by defendant for the collection and delivery of freights in its express department.

III. It admits that the complainant has also continued its express business over the line of respondent's road and in said cities and upon and at the towns and stations on the line of respondent's road.

IV. It admits that the St. Louis, Iron Mountain and Southern Railroad Company has also commenced the carriage of the same class of freights over its road, and that it receives and delivers such freights in the city of Little Rock.

162 (As in this answer the St. Louis, Iron Mountain and Southern R. R. Co. must be often mentioned, to save labor it will hereafter be called I. M. Co.)

Respondent denies *in toto* the allegations that this respondent and the I. M. Co. have come under or are under the management of the same person or persons. The converse of this is shown by the fact of public notoriety, well known to all well-informed persons, that before this supplement was filed the I. M. Co. had been consolidated with and become a part of another corporation, known as the Missouri Pacific R. R. Co., while this respondent remains intact, a separate corporation and having a separate existence.

The allegation that the I. M. Co. and respondent have at any time agreed or arranged with one another to carry on the express business practically as one company is also wholly false. The only grounds for such a supposition are, I, that the same person, being a

stockholder in both companies, has for a short time been
163 the president of both; and, II, that the I. M. Co. and respondent have employed the same person as general superintendent of their express departments, and that in the city of Little Rock they employ the same agent, and use the same office, clerks, and wagons and horses. The object of this arrangement was economy. By sharing these general expenses the expense of both companies was reduced. And for the same purpose, since this arrangement was effected between them, they have extended part of the arrangement to the Little Rock, Mississippi River and Texas R. R. Co., which company has its business in its express department done in the same office, and pays part of the office and wagon expenses. Aside from sharing these expenses the two companies, the Iron Mountain and respondent, are entirely separate and distinct in their express department, as in every other. They actively compete for
business in and at every point where competition can be made—
164 pay, each has its own manager and officers, and the manager of the one has nothing whatever to do with the business of the other. The express department of respondent is merely a department of its general business, kept, like its freight department, under subordinate management for purposes of convenience and efficiency. The superintendent of the express department of respondent, Mr. James Aiken, the same person who is the superintendent of the express department of the I. M. Co., is, as to all business of respondent, subject to the supervision and control of Mr. E. R. Sibley, the general manager of respondent's whole business—the agent at Little Rock and at every other point—and each and every detail of the express business is also subject to his supervision and control. At Memphis respondent provides its own office, agent, horses, and wagons; it pays its own expenses in the express department as in every other, and
165 every dollar of the receipts from the express business done by it goes into its own treasury, for the benefit of its own stockholders. It is wholly untrue that respondent entered into any combination with the I. M. Co. to exclude complainant from both roads. No such combination or agreement was ever made. Respondent has never made any contract with complainant; it believed that by entering into the carriage of that class of freights, generally called express freight, it could increase its income, and being under no obligation, legal or moral, to complainant, it commenced the business for the purpose of adding to its receipts. It is untrue that respondent has ever sought to exclude complainant from shipping freights on and over its road. It has always been willing and is now willing to carry for complainant upon the same terms that it carries for any one else. It is not true that the
166 express departments of the I. M. Co. and respondent are joint in any sense of the word; the express department of respondent is, as before stated, separate and distinct from that of the I. M. Co., and is simply a department of respondent's general business.

It is not true that this respondent has any traffic arrangement with the express department of the Iron Mountain Co., or with the

Pacific Express Company, the benefits of which are not now and have not always been open to the complainant whenever it chose to avail itself of them, upon the same terms and for the same prices charged to the first-named companies. The truth is here, that complainant has always refused to accept the terms given the I. M. Co., or to transact its business with respondent in the manner that it is conducted by the I. M. Co.

This defendant has no other traffic arrangement with either the express department of the I. M. Co., or with the Pacific Ex-
167 press, than the common arrangement which exists in all departments of all railroad companies and between all railroad companies for the interchange of business and for carrying forward to destination the freights delivered by one to another. The matter of which complainant is seeking to complain is not developed in its bill, but is studiously concealed under general forms of expression. But as respondent has nothing whatever to conceal in this matter, it will here state the whole matter, as it understands it. In either its express or freight department the I. M. Co. will accept from a shipper an article to be carried to Memphis from, say, Texarkana, and will give the shipper a through bill of lading on receipt, binding itself for the transportation of such article to destination. The I. M. Co. will in such case either accept payment of freight in advance or will carry the article, the freight to be paid by the consignee. It
168 brings such article to Little Rock, and there delivers it to respondent, who completes the carriage and delivery. If the freight was prepaid, the I. M. Co. pays respondent its charges for its share of the carriage. If not prepaid, respondent collects and pays to the I. M. Co. It has long been the custom of railroad companies—a custom which has the merit of good sense and fair dealing—to give lower proportionate rates upon articles carried long distances; and in the arrangement of through schedule it is possible that between some places reached over the two lines the rate is lower than it would be if the article were shipped to Little Rock and then again shipped to Memphis, although it was not the intention of respondent to make them so when the rate was established. It is possible, however, that such instances do occur; and if they do, complainant, if it will do business with the respondent in the same manner
169 that the other named companies, will get the benefit of it.

But this complainant refuses to do. It never delivers to respondent at Memphis, or anywhere else on respondent's line, an article to be carried to any point beyond respondent's line, whether on the I. M. Co.'s road or elsewhere. Nor does it ever, so far as respondent is informed, deliver to the I. M. Co. a package to be carried to a point beyond its line. In its dealings with respondent it ships all it freights from Memphis to Little Rock, and, as respondent understands it, there reships freights going upon the I. M. Co. to destination. Consequently respondent cannot give it the benefit of any through arrangement it may have with other companies, because complainant's freights being shipped local on respondent's line, and not through, respondent has no means of knowing where the destination of its freight is intended by complainant to be.

170 It is not true that respondent has resorted to any means whatever to evade the intent and meaning of the injunction granted by this court; on the contrary, it has extended to complainant every facility itself enjoys in the conduct of its express business. In doing so, it has not only been greatly damaged in its business, and suffered great loss, but it has been compelled by this court to extend to complainant privileges which it does not and cannot extend to other shippers, in violation of the constitution of the State of Arkansas, and at the risk of causing proceedings against it by the State for the forfeiture of its charter. One of these, the most important and the most onerous to respondent, is that, under the injunction of this court, and ever since it was granted, complainant has claimed and exercised the privilege of loading and unloading its own freights upon and off re-
171 spondent's cars, and of keeping its freight in its own custody during transit on respondent's road. It is easily seen that this is a privilege which respondent could not grant to every shipper. Yet, such is the respect respondent and its officers entertain for this court, it has allowed complainant, ever since the injunction, to exercise this privilege, although during all the time it knew that it was thereby violating, in the plainest manner, the constitution of the State of Arkansas.

By its motion for dissolution of the injunction, respondent now presents this matter to the court, and respectfully asks that it may be relieved from the necessity thus imposed upon it.

Respondent admits that it does charge complainant the rates mentioned in the 9th clause of the complaint; that it charges somewhat greater rates for freights sent shorter distances; and that it charges special rates on small packages. It charges complainant exactly the same prices that it charges other shippers, and it
172 knows no reason why it should, in violation of the constitution and laws of the State, discriminate in complainant's favor.

That this matter may be fully seen by the court, respondent herewith files a copy of its schedule of rates for freights carried in its express department. If it can get one, it will also file herewith a copy of the schedule of rates which complainant charges those of the public who entrust it with their freights for the same carriage upon respondent's road, and if it cannot get one, it asks that complainant be compelled to produce and file a copy of its said schedule.

By this it will be seen that complainant makes the same charges for its services that is made by respondent; that it charges the rates named in its supplement; that it makes greater charges for carriage for shorter distances, and charges special rates for carriage of small and valuable packages; in short, that complainant makes the same charges to the public of which it complains when called upon
173 to pay them itself. If respondent has, as is alleged, no legal right to make such charges, it respectfully asks where complainant gets or finds the right to make them itself. Respondent, by its charter and the law of the State, is authorized to fix its rates for carriage, but where complainant, which is a foreign corporation

and does business in this State only through comity, gets its right to make such charges, to force itself upon respondent's road, and there to demand rights and privileges which are not and cannot be given to other shippers of like freights, respondent fails to see, and most respectfully asks of complainant information. While upon this subject, as complainant in its original complaint or bill speaks of the great benefit it gives to the public, and in its supplement speaks of "competition" with respondent on its own road, respondent files herewith, marked Exhibit 3, a paper which contains and shows the prices charged by the Southern Express Co. for carriage of parcels of all weights between Memphis and Little Rock before the respondent entered upon the carriage of freights, and in the
174 next column shows the prices for the same carriage established by respondent when it commenced the business, and to which it has since adhered, and which respondent avers is strictly correct. And respondent also states what an examination of the schedule of complainant will show; that immediately upon respondent entering upon the business complainant reduced its charges to the prices thus fixed and charged by respondent, making, as will be seen, a reduction from its former charges of upwards of thirty-three per cent.

And respondent charges that through every department of the business, equal changes by reduction were made by respondent, and that the same have been made by complainant, so that it is evident that when complainant had a monopoly of the business it was constantly making to the public most extortionate charges, and that its claim of being a public benefactor is but a sham and a pretence.

175 Respondent does not know how to answer the allegation in the supplement that three cents per ton per mile is a sufficient price to yield a fair profit, and that transportation upon passenger trains does not cost over fifty per cent. more than transportation upon freight trains, for the reason that it does not know what is the cost to it for transportation per ton per mile upon either train. And respondent avers that neither complainant nor any of its officers know anything more of the matter than it does. To ascertain such cost is a problem which has exercised the brains of the best informed railroad men for many years, and which has never been solved.

The cost of transportation differs upon different roads, it differs upon the same road from day to day, and differs upon the same day and upon the same road between trains. Complainant is certainly mistaken, and very greatly mistaken, in its statement that,
176 the cost of transportation upon passenger trains only exceeds the cost of like transportation upon freight trains by about fifty per cent. This must be but a guess, and respondent thinks is a very bad one. Passenger trains haul more dead weight than freight trains, and run faster. And it has been calculated, discarding dead weight, and taking only into consideration relative speed by competent experts, that the cost increases according to the square of the number of miles travelled per hour.

Upon this subject respondent can only say that the cost of carrying and caring for a small package is certainly greater proportionally than the cost of carrying a large one or a car load, and that the risk and responsibility of carrying a package of perishable or breakable articles, or a package of money, diamonds, or other valuables, is proportionally much greater than that of carrying an equal weight of cast iron. Railroads and express companies have always recognized these differences, and, as shown, the complainant has taken into consideration in making up its schedule of charges.

177 And further respondent says that it has tried to fix reasonable charges; that it has compelled complainant to reduce its former charges; that no shipper save complainant objects to respondent's charges as unreasonable or exorbitant; and that whatever may be the cost of carrying freights, respondent has never been able to make its income amount to enough, after paying expenses, to yield or pay one dollar of dividend to one of the stockholders.

Respondent admits that it charges complainant more for carriage of its freight than it charges itself, or that it requires complainant to pay more than it pays to itself, for, in fact, it pays nothing to itself. As before stated, the express department is simply a department, or, more accurately speaking, a part of respondent's general business.

The receipts from it go into respondent's treasury, and its expenses are paid from the treasury. Respondent does not and cannot charge itself for the use of its own cars and other vehicles

178 and fixtures used in its business or for the carriage of its own employees any more than a merchant can charge himself for the use of his own counters and shelving, and to say that respondent shall make complainant pay no more than it pays to itself for this service would be to say that it should carry for complainant for nothing.

It is true that respondent refuses to make any deduction from its general rates to complainant, on account of the fact that complainant, against respondent's will and to its great injury, insists, under the order of this court, upon handling, storing, loading, and unloading from respondent's cars its express matter, and upon keeping it in its own custody while in transit, but it denies that it is at no expense or trouble, or that it has no risk on account of or because complainant does these things.

This brings up the question of the so-called accessorial service, a matter which complainant in all its bills always mentions in general terms claiming credit for it, but which it never explains until compelled to do so.

179 And respondent adds that the only time of which respondent is informed when a partial explanation of what complainant means and claims by this term "accessorial service" was forced out before a court, that court saw and remarked upon its outrageously unfair character. Respondent asks leave to elucidate it fully in this proceeding, both by statement in this answer and by testimony in court.

The complainant claims that its terms "accessorial service" includes all its expenses, or, as it was stated in evidence by its superintendent, includes the gathering up and delivering freights by means of its wagons, the making out its own way bills, the hauling to and from respondent's cars, the expenses of keeping up its offices, wagons, and other facilities, the salaries of its officers and wages of its employees, including its messengers and agents, and, in general, all its business expenses of every character. All these expenses it claims respondent should pay by deduction from the charges made by it. It is easily seen that if this claim can be successfully
180 established, complainant's business will be all profit, while the share of the railroad companies upon whose roads it operates will be the payment of its expenses.

Dividing, for convenience, this accessorial service claim the respondent submits that as to so much of it as includes the salaries of officers and office expenses, and other expenses of like character, the claim of complainant is so manifestly devoid of equity that it needs no answer. As to the collection and delivery of freights by wagon, and loading and unloading it to and from respondent's cars, respondent says that neither respondent nor complainant does this business at any place upon respondent's line except at the cities of Memphis and Little Rock. At both those places both complainant and respondent does this for the same reason that a merchant sets up and keeps a delivery wagon to increase his regular business. Neither complainant nor respondent makes to the shipper any extra charge for the reception of his express matter at his place of business within those cities or for its delivery to a consignee
181 within the same cities. If a shipper carries his package to the depot of respondent and there delivers it to the messenger of either on board the train, and if the consignee comes to the depot and receives it, the same charge is made as though it had been received at the consignor's place of business, and delivered at the consignee's. Neither complainant nor respondent makes any reduction in such cases. Respondent denies that it is at no expense in regard to freights thus delivered, loaded and unloaded by complainant. Besides the troubles which necessarily arises from two sets of persons delivering, loading, and unloading freights to and from the same car at the same time, respondent has found by experience that it costs it more to obtain from complainant a fair and truthful statement of the freights it thus puts upon the cars, and to circumvent the sharp practices practiced by complainant, some of which will be hereinafter stated, and that it loses more by such sharp practices than it would cost it to do the hauling, loading, unloading,
182 and delivering of all freights shipped by complainant—knowing this, it has heretofore offered complainant to do all this for it for nothing, which offer was refused. And now here again respondent repeats the offer in good faith and will give any necessary security for the performance of its offer. Respondent, the complainant, notifying it, in the same manner that is used by other shippers, of the whereabouts of any article it desires shipped in either of the cities named, will send its wagon and agent to the

place, receive the article, give a receipt for it, haul it to the depot, load it in its car, take care of it, carry it to destination on its line, and there, if at a way station where neither complainant nor defendant keeps a wagon, will deliver it to complainant's agent, or to the consignee at its depot, on demand, and if the destination is in either of the cities named, will deliver it in either city, to the consignee therein named by complainant and will make no extra charge for so doing. In other words, it will do all complain-
183 ant's real accessorial work, making no extra charge therefor. And, further, it asks the privilege of doing so.

As to that part of the claim of services rendered to defendant in the keeping by complainant its freights in its own custody, or that of its own messengers whilst in transit on respondent's road, respondent says that so far from being a benefit to it, it is a direct, constant, and serious injury. Very many articles shipped by express are valuable, and upon such packages, as appears from their schedules, both complainant and respondent make an additional charge to cover the increased risk of loss and damage. The course adopted by both complainant and defendant is that when an article is delivered for carriage the shipper is called upon to state its value. If he refuses to do so, or if it is less in value than fifty dollars, he is given a receipt limiting the liability of the company receiving it, whether complainant or defendant, to $50. If he states the value, the extra charge is made upon the value according to the schedule. All
184 who ship over defendant's line comply with this resonable regulation, save complainant. Complainant, to injure defendant, refuses either to accept receipts limiting the liability of defendant, or to disclose to respondent the value of such packages carried and pay the extra charge, claiming and exercising the right of keeping its freights in the custody of its own messenger, and the respondent being compelled by this court to submit, it thus not only evades payment of part of respondent's just dues, but imposes upon respondent a large, constant, and unknown liability, for which it receives no compensation. Nor is this the only way in which respondent is damaged by the complainant, thus retaining the custody of its freights. A large and unknown liability is thus imposed upon it, from which, in case of embezzlement by a messenger of complainant, or of loss through his negligence, it has no opportunity to shield itself. It can always be shown by shippers and complainant that such a package was upon its train, but having no means of knowing at the time
185 of shipment or during transit that it was upon the train, it can neither give the case to its safety which it otherwise would, nor in case of loss make proof the circumstances, and he is placed wholly at the mercy of complainant. In other words, through complainant's unjust action respondent is made liable for the value of all packages transported by complainant, although not entrusted with their custody and given no opportunity to care for their safety. The question of packed parcels comes in properly for explanation here. The complainant will bring to respondent a box or a bag, in which it has packed perhaps fifty packages of a pound each, to be carried from Memphis to Little Rock.

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When it reaches destination it will open and distribute them to different consignees, charging each fifteen cents, and receiving for its carriage seven dollars and fifty cents. Respondent is responsible for the value of each one of these packages, and yet complainant insists that for such packed parcel respondent
186 shall only charge it fifty cents, and shall from that make a very large reduction for its so-called "accessorial" services. But this does not even stop here. Complainant charges more for short distances than for longer ones in proportion, and so does respondent. Complainant frequently brings a bag, box, or parcel to respondent's cars, marked through from Memphis to Little Rock, or the contrary. On the way that package or box will be opened by complainant's messengers upon respondent's cars, and packages taken therefrom and distributed to way stations on the line. This, it will be easily seen, much increases respondent's liability, and at the same time deprives it of much income to which it is entitled. Respondent has nothing to do with the selection of complainant's messengers, and has no control over their action, yet is forced to thus guarantee their faithfulness and honesty. In its own business it can watch the conduct of a messenger, discharge him if his
187 action is suspicious, or take bond from him for faithful and honest discharge of his duties, but complainant's messengers are beyond its control, and yet it has to risk their action.

It would be impossible to detail all the subterfuges resorted to by complainant to wrong and defraud respondent out of its just dues, and many of them will have to be left to be developed in the evidence which respondent hopes will be called for and heard by the court upon presentation of complainant's supplement. Respondent does not believe that this court intended by its injunction to allow complainant to thus injure and wrong respondent, and increase its already extensive liability, and it takes this opportunity to bring the acts and doings of the complainant to the knowledge of the court for its consideration, and that it may have relief therefor.

Another practice of complainant needs mention. It brings to respondent's cars and loads and forces respondent to carry safes
188 and boxes, which, perhaps, weighs a hundred pounds, but which may contain a hundred thousand dollars in currency; refuses to disclose the contents, and insists that respondent, under pain of being attached for contempt of this court, shall carry such safes at the same price it would charge for carriage of the same weight of cast-iron.

It was to try to break up this practice of complainant or to get some poor equivalent for its extra risk that respondent established the three and six rates complained of in the supplement. Even at these rates complainant was and is largely gainer and respondent is largely loser.

But respondent never desired to keep up these rates; what it desired was to get complainant to fairly and honestly disclose the contents of such safes and packages, and pay respondent's rates upon them, or to get complainant to do what every other shipper does when he declines to state value and accept one of respondent's receipts limit-

ing its liability, of the same character as receipts issued by
189 complainant itself in such cases. Respondent established these rates to apply generally to every shipper, but it does not seek to conceal that they were established because of complainant's unfair conduct, and that they affect complainant alone, not because they are not general in their character, but because no other shipper but complainant thus seeks to defraud respondent.

How complainant submitted to them, and what efforts it made to avoid them; how it has treated respondent in regard to them, will be told hereafter. But to show that respondent is telling the exact truth in stating that it desired to get complainant to relieve it from this great and unknown liability, by accepting the common receipt, respondent states that it did, through the superintendent of its express department, make the agreement with complainant mentioned, but the terms not stated in the supplement. And it admits that the agreement was made in the shape of a proposition by respondent accepted by complainant. The agreement is contained in the letter dated
190 March 3, 1881, addressed by respondent's said superintendent of its express department to all agents upon the I. M. road and the road of this company. This letter was written in the office of complainant, at Memphis, in the presence of Mr. Fisher, the superintendent of complainant's business on those roads; was submitted to him and approved as containing the agreement, and he took a copy of it. Believing that complainant had made it in good faith, respondent caused all its agents to be instructed in accordance with it by letters similar, and, indeed, exact copies of the one exhibited herewith, marked 4. And respondent's said superintendent understood Mr. Fisher to agree that he would instruct his agents and employees to act in full accordance with the agreement. Yet this agreement was broken and violated by complainant within one week after it was made. Within one week complainant, through and by its agents and officers, refused to accept such receipts, and began and continued to open and distribute from safes and boxes and packed
191 parcels en route or in transit. And since and up to this time complainant has always refused to abide by any part of said agreement; has refused to accept such receipts, and has, against the remonstrances of respondent, constantly continued to open such packages and distribute from them while in transit.

Finding that complainant would not comply with its agreement, respondent, by a letter from its said superintendent to its agents and employees, dated April 16, 1881, a copy of which is exhibited, marked 5, re-established the same rates, and since demands payment of them. The allegation in the supplement that respondent demands that complainant disclose to the agents of respondent the contents of valuable packages shipped by it has reference to this matter, and is simply intended by respondent to ascertain its liability and to prevent complainant from thus defrauding it. Complainant has always known that if it would accept receipts like those accepted by other shippers, and such as it gives itself, no request to know the value of packages would be made,
192 and that only single rates would be charged. Respondent further says that it is informed and believes, and will

show, that the complainant some months ago, in the cause of the same complainant *v.* The I. M. Co., now pending in the circuit court of the United States for the eastern district of Missouri, in some way applied to that court, and thereby brought before the court that the said I. M. Co., in its express department, was charging complainant the three and six rates mentioned in this supplement; that, upon hearing thereof, the said court refused to interfere therewith or in any manner to restrain respondent from making such charges. And respondent says that at the time that it- answer was filed in the original case, to wit, on the 21st day of June last, it was here, in open court, agreed between counsel for complainant and the counsel for the respondent that as the case against the I. M. Co., pending in said circuit court for the eastern district of Missouri, involved the same matters, and as that suit had been first begun, that if the complainant desired any further action of the court in regard to rates, or anything connected with the con-
193 duct of the business, it might apply to that court in that case, upon notice to the counsel therein for the I. M. Co., and that whatever that court might order should be entered, by consent, as the order and judgment of this court; which agreement was made at the time in the presence of and with the consent of this court. And respondent submits, as the complainant has made this same application to that court, and as that court has passed upon and refused it, that complainant should be precluded thereby, and that this court should refuse to hear this application, or to make any order thereon different from the said action of said circuit court of the E. D. of Mo.

And respondent, also further answering, denies all intent or wish to evade the orders of this court, and says that in all its doings it has constantly obeyed the order and injunction of this court, even to its own injury, at it understood it, and as its counsel advised it was its true intent and meaning; and it says that as to the three
194 and six rates mentioned in the supplement, those rates were established by respondent November, 1880; that since then complainant made application to the said circuit court, E. D. of Mo.; that complainant also afterward, in February, 1880, applied to the circuit court of the United States for the Western District of Tennessee, and not disclosing to that court the pendency of this suit, or the fact that this court had taken cognizance of the matters in issue and had granted its injunction therein, obtained from that court an injunction restraining respondent from charging more than 50 cts. per hundred pounds per hundred miles; that complainant caused respondent and its officers and agents to be attached by the last-named court, and put it to great and unnecessary expense and trouble; and that said injunction was by said last-named court dissolved upon the pendency of this suit being brought to its notice by plea of respondent. And it says that save during
195 the time when respondent, believing that complainant had made the agreement aforementioned in good faith, acted thereunder, and save by its application to said court, complainant has acquiesced in said rates and in the *constitution* thereby by re-

spondent placed upon the order of this court, and that complainant should not now be heard in regard to such matters.

And having fully answered, &c.

B. C. BROWN, *For Respondent.*
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as reorganized,
By JNO. W. GOODWIN, *Secretary.*

Filed May 23, 1881.

RALPH L. GOODRICH, *Clerk.*

196 And on May 25, 1881, as follows:

THE SOUTHERN EXPRESS COMPANY
vs.
MEMPHIS AND LITTLE ROCK RAILROAD, as reorganized.

By consent of all parties it is ordered by the court that the matter arising on the plaintiff's supplemental bill, and motions to enlarge and extend the operation of the injunction herein, and defendant's motion to dissolve said injunction be set down for hearing before the circuit judge at the United States court-room at St. Louis on Saturday, the 4th day of June next. The clerk will transmit the record in this case to the circuit judge on or before the day appointed for hearing said motions.

197 And on July 14, 1881, as follows:

THE SOUTHERN EXPRESS COMPANY
vs.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY.

The cause came on by consent to be heard in vacation upon the motion of respondent to dissolve the injunction heretofore allowed; and the court having heard the arguments of counsel, and being fully advised, overrules said motion.

And the cause coming on to be heard by consent upon the motion of complainant to modify the injunction heretofore allowed, and the court having heard the argument of counsel, and being advised, orders that said injunction be, and the same is, modified by adding hereto the following words, to wit:

And the said respondent, The Memphis and Little Rock Railroad Company, its servants, employés, and agents, and each of
198 them, is hereby further enjoined and restrained until the final hearing of this court from demanding from or charging to the complainant more than a fair and reasonable compensation for the transportation of express matter, including closed packages, over its line of railroad, such charges in no case to exceed the rate charged upon similar express matter to itself, or to any other express company, or for similar express matter received from or delivered to the Iron Mountain and Southern Railroad Company Express or the Pacific Express Company.

July 12, 1881.

199 United States of America, Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 10th day of April, anno Domini one thousand eight hundred and eighty-two, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable George W. McCrary, circuit judge, presiding, & Hon. Henry C. Caldwell, district judge, presiding, and holding said court, the following proceedings were had, to wit, on April 12, 1882:

THE SOUTHERN EXPRESS COMPANY
vs.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as reorganized.

And now this day come the parties aforesaid, and by their counsel then and there present bring on this cause to be heard on the pleadings and proofs, and the same were then and there presented to the court, and the argument of counsel for the respective parties was heard, and the said cause is then and there submitted; and due deliberation having been thereupon had, it is by the court ordered, adjudged, and decreed as follows:

I. That the express business, as fully described and shown in the record, is a branch of the carrying trade that has by the neces-
200 sities of commerce and the usages of those engaged in transportation become known and recognized so as to require the court to take notice of the same as distinct from the ordinary transportation of the large mass of freight usually carried on steamboats and railroads.

II. That it has become the law and usage, and is one of the neces sities of the express business, that the property confided to an express company for transportation should be kept while in transit in the immediate charge of the messenger or agent of such express company.

III. That to refuse permission to such messengers or agents to accompany such property on the steamboats or railroads on which it is to be carried, and to deny to them the right to the custody of the property while so carried, would be destructive of the express business and of the rights which the public have to the use of such steamboats and railroads for the transportation of such property so under the control of such messengers or agents.

201 IV. That the defendant, its officers, agents, and servants, have no right to open or inspect any of the packages or express matter which may be offered to it for transportation by the plaintiff's company, or to demand a knowledge of the contents thereof, nor to refuse transportation thereof unless such inspection be granted or such knowledge be afforded.

V. That it is the duty of the defendant to carry the express matter of the plaintiff's company and the messengers or agents in charge thereof at a just and reasonable rate of compensation, and that such rate of compensation is to be found and established as a unit, and is to include as well the transportation of such messengers

or agents as of the express matter in their custody and under their control.

VI. That on and subsequent to the 1st day of May, 1877, the said defendant afforded to the said plaintiff all the facilities needed by it for the conduct of its express business over the defendant's
202 lines, and such as are specifically in the bill herein set forth; that thereafter the defendant notified the plaintiff that such facilities would be withdrawn; and that it was the intention and purpose of the defendant to exclude the plaintiff's company from its lines on and after the 21 day of June, 1880; that such intention and purpose were restrained by the preliminary injunction order of the court, which said injunction order was afterwards modified, as appears in the record.

VII. That it is the duty of the defendant to afford to the plaintiff all express facilities, and to the same extent and upon the same trains that said defendant may accord to itself or to any other company or corporation engaged in the conduct of an express business on the defendant's lines, and to afford the same facilities to the plaintiff on all its passenger trains.

VIII. That the plaintiff keep and render monthly a true
203 account of the services performed for it by defendant, and pay therefor at the rate hereinafter specified on or before the —— of each month, after the date hereof, for the business of the month preceding; and that the defendant has no right to require prepayment for said express facilities, or payment therefor at the end of every train, or in any other manner than as is herein provided; and that plaintiff execute and deliver to the defendant a bond in the sum of twenty-five thousand dollars, conditioned well and faithfully to make such payments as are herein provided, and with surety to be approved by a judge of the court.

IX. That it is and was the duty of said defendant to afford, and to have afforded, such facilities to the plaintiff as herein specified, for a just and reasonable compensation.

X. Whereas it is alleged by complainant that since the commencement of this suit and the service of the preliminary
204 order of injunction herein, the defendant has, in violation of said injunction and of the rights of complainant, made unjust discriminations against complainant, and has charged complainant unjust and unreasonable rates for carrying express matter; therefore, it is ordered that complainant have leave hereafter to apply for an investigation of these and similar allegations, and for such order with respect thereto as the facts, when ascertained, may justify, and for the appointment of a master to take proof and report thereon.

XI. That the defendant, its officers, agents, servants, and employees, and all persons acting under their authority, be, and they hereby are, permanently and perpetually enjoined and restrained from interfering with or disturbing in any manner the enjoyment by the plaintiff of the facilities provided for in this decree, to be accorded to it by the said defendant upon its lines of railway, or such as have been heretofore accorded to it for the transaction of

205 the business of the plaintiff, and of the express business of the public confided to its care; and from interfering with any of the express matter or messengers of the plaintiff; and from excluding or ejecting any of its express matter or messengers from the depots, trains, cars, or lines of the said defendant, as the same are by this decree directed to be permitted to be enjoyed and occupied by the said plaintiff; and from refusing to receive and transport in like manner as the said defendant is now transporting, or as it may hereafter transport, for itself or for any other express company, over its lines of railway, the express matter and messengers of the said plaintiff; and from interfering with or disturbing the business of the said plaintiff in any way or manner whatsoever, the said plaintiff paying for the services performed for it by the defendant monthly, as herein prescribed, at a rate not exceeding
206 fifty per centum more than its prescribed rates for the transportation of ordinary freight, and not exceeding the rate at which it may itself transport express matter on its own account, or for any other express or other corporation or for private individuals, reserving to either party the right at any time hereafter to apply to this court according to the rules in equity proceedings for a modification of this decree as to the measure of compensation herein prescribed.

XII. It is further ordered, adjudged, and decreed that defendant pay the costs to be taxed herein, and that an execution or a fee bill issue therefor. And the said defendant enters herein its prayer for appeal, which prayer is granted.

GEO. W. McCRARY,
Circuit Judge.

207 And on April 18, 1882, the following proceedings were had, to wit:

THE SOUTHERN EXPRESS CO.
v.
THE MEMPHIS AND LITTLE ROCK RAILWAY CO.

Comes the complainant by U. M. and G. B. Rose, Esq., its solicitors, and files herein its bond.

Which bond is in the words and figures following, to wit:

208 Circuit Court of the United States, Eastern District of Arkansas.

THE SOUTHERN EXPRESS COMPANY
vs.
THE MEMPHIS AND LITTLE ROCK RAILWAY COMPANY, as reorganized.

Know all men by these presents, that the Southern Express Company, as principal, and Henry B. Plant, of No. 584 Fifth avenue, New York city, and Henry Sanford, of No. 59 Broadway, in said city, as sureties, are held and firmly bound unto the said Memphis

and Little Rock Railway Company, as reorganized, in the sum of twenty-five thousand dollars, lawful money of the United States of America, to be paid to the said Memphis and Little Rock Railway Company, as reorganized, its successors or assignors, for which payment, well and truly to be made, the said Southern Express
209 Company and the said Henry B. Plant and the said Henry Sanford bind itself and themselves as aforesaid, jointly and severally, firmly by these presents.

Sealed with the seal of the said company and with the seals of the said sureties, this twelfth day of April, in the year one thousand eight hundred and eighty-two.

Whereas the said Southern Express Company heretofore commenced a suit in equity in the said court against the said Memphis and Little Rock Railway Company, as reorganized, in which such proceeding- were had that, on the 12th day of April, A. D. 1882, a certain decree was pronounced therein, to which reference is hereby had and made, in which it was, among other things, provided and decreed as follows, to wit: That it is the duty of the defendant to afford to the plaintiff all express facilities and to the same extent and upon the same terms that said defendant may accord to itself or to any other company or corporation engaged in the conduct of an express business on the defendant's lines, and to afford the same facilities to plaintiff on all its passenger trains, and
210 that the plaintiff keep and render a true account of the services performed for it by defendant, and pay therefor at the rate hereinafter specified, on or before the fifteenth of each month after the date hereof, (that is, after the 12th day of April, 1882, the aforesaid date of said decree,) for the business of the month preceding; and that the defendant has no right to require prepayment for said express facilities, or payment therefor at the end of every train, or in any other manner than as is herein provided; and that plaintiff execute and deliver to the defendant a bond in the sum of twenty-five thousand dollars, conditioned well and faithfully to make such payments as are herein provided, and with surety to be approved by a judge of the court; the said plaintiff paying for the services performed for it by the defendant monthly as herein prescribed, at a rate not exceeding fifty per centum more than the prescribed rates for the transportation of ordinary freight, and not exceeding the rate at which it may itself transport express
211 matter on its own account, or for any other express or other corporation, or for private individuals, reserving to either party the right at any time hereafter to apply to this court, according to the rules in equity proceedings, for a modification of this decree as to the measure of compensation herein prescribed.

Now, therefore, the condition of the above obligation is such, that if the above bounden Southern Express Company shall well and faithfully make unto the said Memphis and Little Rock Railway Company, as reorganized, such payments as are in said decree provided, or such payments as said court may hereafter prescribe under any modification of said decree, and according to the true intent and meaning of the said decree, without any fraud or delay, then

the above obligation to be void; otherwise to remain in full force and virtue.

SOUTHERN EXPRESS COMPANY,
By H. B. PLANT, *Pres'd't.*
H. B. PLANT.
HENRY SANFORD.

Sealed and delivered in the presence of—
CHARLES EDGAR MILLS.

212 UNITED STATES OF AMERICA, } ss:
Southern District and City of New York, }

On this 12 day of April, A. D. 1882, before me personally appeared Henry B. Plant, to me personally known, and known to me to be the president of the Southern Express Company, the principal in the foregoing bond, and acknowledged that he executed the same as and for the act and deed of the said Southern Express Company, and that the seal thereto annexed was the seal of the said company; and then and there also appeared the said Henry B. Plant, individually also to me personally known, and known to me to be the person of that name named as surety in the foregoing bond, and acknowledged that he executed the same for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and official seal the day and year herein above written.

CHARLES EDGAR MILLS,
A Commissioner for —— in New York,
and a Notary Public for New York County in N. Y.

213 UNITED STATES OF AMERICA, } ss:
Southern District and City of New York, }

Henry B. Plant, being duly sworn, deposes and says: That he is a resident of the city and State of New York and a citizen thereof, and a householder therein, and that he is worth the sum of one hundred and fifty thousand dollars over and above all his just debts or liabilities which he owes or has incurred, and exclusive of property exempt from execution.

H. B. PLANT.

Subscribed and sworn to before me, this 12 day of April, 1882, as witness my hand and official seals.

CHARLES EDGAR MILLS,
A Commissioner for Arkansas in New York,
and a Notary Public for New York County in N. Y.

UNITED STATES OF AMERICA, } ss:
Southern District and City of New York, }

On this 14th day of April, 1882, before me personally appeared Henry Sanford, to me personally known, and known to me to be

the person of that name named as surety in the foregoing
214 bond, and acknowledged that he executed the same for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and seal the day and year herein above written.

CHARLES EDGAR MILLS,
A Commissioner for Arkansas in New York,
and Notary Public for New York County in N. Y.

UNITED STATES OF AMERICA, }
Southern District and City of New York, } *ss:*

Henry Sanford, being duly sworn, deposes and says that he is engaged in business in the city of New York; that he is a resident of Bridgeport, in the State of Connecticut, and a freeholder therein, and that he is worth the sum of one hundred and fifty thousand dollars over and above all his just debts or liabilities which he owes or has incurred, and exclusive of property exempt from execution.

HENRY SANFORD.

Subscribed and sworn to before me, this 14th day of April, 1882, as witness my hand and official seals.

CHARLES EDGAR MILLS,
A Commissioner for Arkansas in New York,
and a Notary Public for New York County in N. Y.

215 Believing this bond to be good, defendant consents that it be approved.

THE MEMPHIS AND LITTLE
ROCK R. R. CO., as reorganized, *Def't,*
By B. C. BROWN, *its Solicitor.*

Filed April 18, 1882.

RALPH L. GOODRICH, *Clerk.*

216 And on May 4, 1882, as follows:

SOUTHERN EXPRESS CO.
vs.
THE MEMPHIS & LITTLE ROCK RAILROAD CO.

It is ordered that the bond herein filed be approved.

And on June 6, 1882, the following:

On this day came the plaintiff, by U. M. & G. B. Rose, Esq's, its attorneys, and also came the defendant, by B. C. Brown, Esq., its solicitor, and on motion of the plaintiff the injuntion bond filed herein is sustained.

And on the same day, the following:

Comes the complainant, by U. M. & G. B. Rose, Es'qs, its solicitors, and files herein its petition for reference to a master.

Which petition is as follows:

217 In the United States Circuit Court for the Eastern District of Arkansas.

THE SOUTHERN EXPRESS COMPANY, Plaintiff,
v.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as reorganized, Defendant.
} In Equity.

To the judges of said court in chancery sitting:

Your petitioner, the said Southern Express Company, prays the court to grant it the reference authorized by sections V and X of the decree rendered in this cause on this 12th day of April, 1882, on the following grounds:

1. Your petitioner shows that after the making of the orders of injunction by the court herein, and notice thereof to the defendant, and during the pendency of this suit, the said defendant refused to carry any express matter of said plaintiff on its trains at a just, reasonable, or legal rate of compensation therefor; but ex-
218 acted from the plaintiff, and required it to pay, as a condition precedent to such transportation, excessive, unreasonable, and illegal rates.

2. That during the whole of said period the defendant refused to carry the plaintiff's messengers in charge of its express matter on its trains for a just and reasonable compensation, but compelled plaintiff to pay therefor excessive, unreasonable, and illegal rates of charge.

3. That during the whole of said period said defendant discriminated against the plaintiff both in respect of the transportation of said messengers and of said express matter on its said trains, denying to said messengers the same accommodations extended by it to its own messengers and to others, compelling plaintiff to pay before carrying its said messengers higher rates than the defendant charged for its own messengers and others.

4. That during the whole of said period the defendant unjustly discriminated against the plaintiff in this: That it carried express matter for itself and others at less rates than it required
219 from the plaintiff, and compelled it to pay.

5. That during the whole of said period the defendant unjustly discriminated against the plaintiff in this: That it included in its charges against plaintiff for transportation of its express matter and compelled plaintiff to pay compensation for accessorial services to shipments of express matter off and beyond its railroad cars and trains not rendered by defendant, but in fact rendered by plaintiff, and just as if the defendant had rendered such service.

6. That during the whole period from the granting of said injunction down to the date of said decree, defendant unjustly discriminated against the plaintiff in this: That it compelled plaintiff to pay, before it would transport its express matter, a greater amount on shipments for a less distance than it exacted and collected for the transportation of the same class and quantity of goods from plaintiff and others for a greater distance.

7. That during the whole of said period the defendant unjustly discriminated against the plaintiff in this: That it charged plaintiff and compelled him to pay a greater amount as compensation for transportation of plaintiff's express matter over portions of its road than it charged plaintiff and others to pay for transpartation of like quantities of the same class of express matter over other portions of its road of equal distance.

That all of said wrongs were in violation of the duty of the defendant and of the orders and injunctions of this court, in contempt of the court, and to the great injury and damage of the plaintiff.

Wherefore your petitioner prays that it may be referred to a master in chancery, to investigate and report to the court, as provided in said decree, what is, and has been, since the filing of the bill in this cause, a reasonable compensation to be paid by your petitioner to the defendant for transportion of its express matter and its messengers in charge thereof, on the railway trains and cars of the defendant, affording to plaintiff all necessary and reasonable facilities and accommodations for conducting its business in that behalf; the same to be found and established as a unit, including transportation and accommodation for both the express freights and messengers of plaintiff as aforesaid.

Also to investigate and report as to the allegations of wrong and injury aforesaid, and for the purposes aforesaid to use all evidence taken in this cause and on file herein, and to re-examine the same witnesses, if necessary, and any other witnesses to be produced by the parties, and to conduct the proceedings before him at such time and places as he may designate; and to state an account of the express business conducted by plaintiff over defendant's lines from the time of the filing of said bill until the date of said final decree; and what amount the plaintiff has paid to the defendant on account of transportation of its express matter and messengers, and accommodations extended to it by the defendant during the time last named; and what amount, if any, has been paid to defendant in that behalf in excess of a reasonable and legal compensation therefor; and what damages the plaintiff has sustained by reason of the wrongs and injuries as aforesaid alleged, and to report to the court all the evidence received by said master, and all his actings and doings.

And your petitioner will ever pray.

F. E. WHITFIELD,
U. M. & G. B. ROSE, *Solicitors.*

UNITED STATES, *Eastern District of Arkansas:*

I, the undersigned, an agent of the Southern Express Company, say that I believe the statements made in the foregoing petition to be true.

GEO. R. McFADDEN.

Sworn to and subscribed before me, this 1st day of June, 1882.

RALPH L. GOODRICH, *Clerk.*

223 And on July 6th, 1882, as follows:

SOUTHERN EXPRESS COMPANY
vs.
MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as reorganized. } 382.

Now at this day came the parties, and the petition of the plaintiff filed herein having been fully considered by the court, it is ordered that there be referred to John M. Rose, Esq., as master *pro hac vice*, to investigate, examine, and report to the court, under said decree of April 11th, 1882, pursuant to the rules of the court in such cases provided—

First. What was, during the period between the injunction order herein of June 21st, 1880, and the 11th day of April, 1882, the rate actually enforced by the defendant against plaintiff for carrying its express freight over such portion of its line as the said plaintiff was allowed to send its express freight over, and what price in addition thereto, if any, it charged for the fares of messengers in
224 charge of said freight, and state an account showing said rates and fares between said dates and the amount thereof, respectively.

Second. What were the statutory rates for carriage of ordinary freights by said defendants during said period, and state an account of the same as applied to the express freight transported by the defendant for said plaintiff during said period, as if the same were ordinary freights.

Third. What was during the same period a reasonable compensation to be paid by plaintiff to the defendant for allowing plaintiff all reasonable and proper facilities for conducting plaintiff's business over defendant's road, cars, and lines; the same to be found as a unit, including compensation for the transportation both of plaintiff's express matter and messengers in the custody and control thereof; also what amount during the same period the plaintiff was required to pay, and has paid, to the defendant in that be-
225 half; and if the amount so paid by plaintiff has exceeded such reasonable compensation, to state an account thereof.

Fourth. Whether during said period defendant included in its charges for transportation of express matter for plaintiff charges also for accessorial service not performed by said defendant, but performed by plaintiff for itself, under the term of "accessorial" service as herein used; the master will include only the costs and expenses of collecting and delivering express matter to the respective railroad depots or stations for transportation by defendant on its road and cars, and of delivering such express matter on the arrival of the same at the place of destination to the consignees thereof, at any other place than its depots or stations, respectively.

Fifth. Whether during the period aforesaid the defendant required plaintiff to pay, and plaintiff paid for transportation of its messengers in custody of its express matter, other than usual passen-
226 ger fares, and whether during the same period defendant has discriminated against plaintiff by transporting express mes-

sengers other than plaintiff's at less rates than it compelled plaintiff to pay; and, if so, to state an account of the excess paid by plaintiff over either of said rates.

Sixth. And whether during the same period defendant discriminated against plaintiff by charging and compelling plaintiff to pay for transportation of its express matter higher rates and greater amounts than it charged others for the same and similar services; and, if so, to state an account of the amount of money by means of such discrimination so paid or required to be paid by plaintiff above the rates so allowed to others than plaintiff for such service.

Seventh. Whether, during the period aforesaid, the defendant discriminated against plaintiff by refusing to allow plaintiff to
227 conduct its business on any of defendant's lines, trains, and express cars in use during said period, on which defendant and others conducted express business while plaintiff was so excluded; and whether in such exclusion of plaintiff and its business its express matter and messengers were hindered and delayed, and plaintiff was thereby prevented from competing with defendant and others conducting express business over said lines; and, if so, what damages, if any, were sustained by plaintiff in its business, and state an account thereof.

Eighth. It is further ordered that for purposes of the reference hereby directed the master is to use all evidence on file in this cause and any other produced by the parties, and re-examine the same witnesses if necessary, and any other witnesses produced by the parties, and conduct the proceedings before him at such times and places as he may designate, on due notice to the respective parties, and report his findings and all the evidence before him.

228 On the final hearing the following exhibits were introduced and read in evidence:

229 EXHIBIT —.

St. Louis, Iron Mountain & Southern Railway Co., Memphis & Little Rock Railroad Co., Express Department.

E. J. BUTLER, Agent.

LITTLE ROCK, ARK.

Mileage Tariff for M. and L. R. R. R.

	Money p'r $1,000.	Freight p'r 100 lbs.	Old rate per 100 by So. Ex. Co.
Under 2 miles	40	25	1 00
Over 2 to 5 miles	40	30	1 00
" 5 to 10 miles	40	35	1 00
" 10 to 15 miles	50	40	1 00
" 15 to 30 miles	50	50	1 00
" 30 to 50 miles	50	60	1 00
" 50 to 75 miles	50	75	1 00
" 75 to 100 miles	75	1 00	1 25
" 100 or more	75	1 00	1 50

230 **EXHIBIT 3.—Between Memphis and Little Rock.**

Weight of 100 p'ck'g's in p'ds.	Price p'r pc'k'ge by So. Ex. Co.	Price per p'ck'ge by M. & L. R. Ex. Co.
1	25	15
2	25	25
3	25	25
4	25	25
5	25	25
6	50	30
7	50	30
8	50	30
9	50	30
10	50	30
11	50	35
12	50	35
13	50	35
14	50	35
15	50	35
16	50	40
17	50	40
18	50	40
19	50	40
20	50	40
21	75	45
22	75	45
23	75	45
24	75	45
25	75	45
26	75	50
27	75	50
28	75	50
29	75	50
30	75	50
31	75	50
32	75	50
33	75	50
34	75	50
35	75	50
36	75	50
37	75	50
38	75	50
39	75	50
40	75	50
41	1 00	60
42	1 00	60
43	1 00	60
44	1 00	60
45	1 00	60
46	1 00	70

Weight of 100 p'ck'g's in p'ds.	Price p'r pc'k'ge by So. Ex. Co.	Price per p'ck'ge by M. & L. R. Ex. Co.
47	1 00	70
48	1 00	70
49	1 00	70
50	1 00	70
51	1 25	70
52	1 25	70
53	1 25	70
54	1 25	70
55	1 25	75
231 56	1 25	75
57	1 25	75
58	1 25	75
59	1 25	75
60	1 25	80
61	1 25	80
62	1 25	80
63	1 25	80
64	1 25	80
65	1 25	90
66	1 25	90
67	1 25	90
68	1 25	90
69	1 25	90
70	1 50	1 00
71	1 50	1 00
72	1 50	1 00
73	1 50	1 00
74	1 50	1 00
75	1 50	1 00
76	1 50	1 00
77	1 50	1 00
78	1 50	1 00
79	1 50	1 00
80	1 50	1 00
81	1 50	1 00
82	1 50	1 00
83	1 50	1 00
84	1 50	1 00
85	1 50	1 00
86	1 50	1 00
87	1 50	1 00
88	1 50	1 00
89	1 50	1 00
90	1 50	1 00
91	1 50	1 00
92	1 50	1 00
93	1 50	1 00
94	1 50	1 00
95		

Weight of 100 p'ck'g's in p'ds.	Price p'r pc'k'ge by So. Ex. Co.	Price per p'ck'ge by M. & L. R. Ex. Co.
96	1 50	1 00
97	1 50	1 00
98	1 50	1 00
99	1 50	1 00
100	1 50	1 00
Total-- 5050	103 75	68 40
Total weight of 100 p'k'g's.	Total charge on 100 p'k'g's by So. Ex. Co.	Total charge on 100 p'k'g's by M. & L. R. Ex. Co.

232 EXHIBIT 4.

SOUTHERN EXPRESS COMPANY,
OFFICE OF DIVISION SUP'T,
MEMPHIS, *March* 3, 1881.

E. J. BUTLER, *Little Rock, Ark.*

DEAR SIR: I have agreed with Sup't Fisher that on and after receipt of this letter their safes and sacks of valuable packages shall be transported as ordinary merchandise, providing their agents shall accept our ordinary form of receipt for the same, and they shall not be distributed from while in transit.

Yrs. resp't., JAS. AIKIN,
Sup't I. M. & M. & L. R. Express.

P. S.—Give rec'ts for safes and sacks in every instance.

J. A.

233 EXHIBIT 5.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.,
MEMPHIS AND LITTLE ROCK RAILROAD CO.,
EXPRESS DEPARTMENT, SUPERINTENDENT'S OFFICE,
ST. LOUIS, MO., *April* 16*th*, 1881.

E. J. BUTLER, Esq., *Agent Little Rock, Ark.*

DEAR SIR: Commencing on Tuesday, the 19th inst., and until further notice, you will, on the classes of shipments herein described, use the rates named below; on sacks and boxes of valuable packages, three (3) times merchandise rate; on safes or treasure boxes containing currency, coin, or valuables, six (6) times merchandise rate. Inform shippers who offer either or both classes for shipment. On empty safes or treasure boxes, charge merchandise rate only.

Yours, respectfully, JAS. AIKIN, *Sup't.*

234 In the Circuit Court of the U. S. for the Eastern Dist. of Arkansas. In Equity.

THE SOUTHERN EXPRESS COMPANY, Complainant,
vs.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY, as reorganized, Defendant.

It is agreed that upon the hearing of the above-entitled cause the

matter herein following shall be taken and considered as evidence admitted without further proof, subject alone to exceptions for competency and relevancy:

I. That the Southern Express Company began doing business over the Memphis and Little Rock railroad while said road was owned and possessed by a former company, which company has since ceased to operate said road.

That said express company began such business under a contract with such former railroad company—a copy of which is hereto attached—and has never since made any other contract in
235 respect thereto with said former company or its successors, but has continued to conduct its business over said railroad under its successive managements without further express agreement or contract until the day when, as shown by the record, the defendant notified the complainant of its intention to do its own express business, receiving from, and paying for, express facilities afforded on said railroad by the several managements thereof according to the terms and provisions of said contract.

II. That the whole amount of express matter ordinarily carried over defendant's road by both complainant and defendant is not more than one competent messenger could handle and care for according to the usage of the business.

III. That the express department of the defendant is conducted as a department of its general business; that all the expenses of such department are paid by defendant, and all receipts go into defendant's treasury, and that the express department of defendant is not connected with nor a part of the express department of any other railroad company; that the business of such express
236 department is under the charge and control of the general manager and other officers of defendant, and not subject to the control of the officers of any other railroad or express company.

IV. That no connection exists between defendant and any other express company; that at the city of Little Rock the defendant, in the management of its express business, the Pacific Express Company and the Little Rock, Mississippi River and Texas Railroad Company, employ the same agent, who, however, is paid by each separately for services rendered to each.

V. That the Southern Express Company, in conducting its business over the defendant's road now, and heretofore has, and employs, only its own officers, agents, offices, wagons, safes, messengers, and other express equipment, and does not make use of the offices, wagons, agents, messengers, safes, or other express equipment of the defendant's express department, but declines to avail itself of their use or to accept in its business any service from the defendant except transportation or space on its passenger trains, and access thereto, for its express matter, and its officers and
237 messengers in custody thereof.

VI. That for express matter carried over said railroad by the plaintiff in the custody of its messengers and exclusively handled by the plaintiff's employés, the defendant charges the plaintiff, without abatement, the same compensation that it charges those of the

public who ship their express freights over thr defendant's road in the care and custody of, and to be hauled and handled by, the employés of defendant's express department, and also passenger fare for messengers; and that these rates of charges are according to a tariff purporting to be the defendant's express tariff, a copy of which is, or will be, filed in the record of this cause.

A copy of the tariff of plaintiff used in its business, and upon which its charges for carriage of express matter of all kinds on defendant's road were based before defendant began doing an express business; a copy of tariff plaintiff established and used on same road since def'd't began an express business and a copy of the bill of lading given shippers by pl'ff are hereto attached and made parts of this agreement.

238 VII. That the defendant has not made, and refuses to make, any special tariff for express companies conducting an express business over its road in the manner that the plaintiff conducts its business.

VIII. That the defendant is engaged in precisely the same character of express business as is the plaintiff, conducting the same just as the plaintiff and other express companies, and receives and transports express matter for the public upon a bill of lading, the form and substance whereof is set out in copy thereof hereunto attached.

IX. The contract referred to in paragraph I of this stipulation was amended in respect to certain rates only on January 14, 1874, by the general superintendent of the Memphis and Little Rock Railway Company, and the defendant suffered the plaintiff to carry over its said road its express matter and do an express business thereon upon the same rates and terms as were fixed by said contract thus amended until the commencement of this suit. Said contract

239 dated May 26th, 1871, and said amendment thereto in the form of a letter addressed under date Jan. 14, 1874, by A. S. Livermore, general superintendent, to M. J. O'Brien, general superintendent So. Ex. Co., are fully set out in copies thereof hereunto appended.

It is also stipulated that the original charter of the Memphis and Little Rock Railroad Company and the amendments thereto, and the several mortgages of said railroad company, and the official proceedings of the said company, as the same are set out in a certain pamphlet entitled, on its title-page, "Documents Relating to the Reorganization of the Memphis and Little Rock Railroad Company, Little Rock, Ark.: W. H. Windsor, Printer and Book-binder, 1877," or so much thereof as either party may see proper to introduce at the hearing of this cause; and also all laws, public or private, of the State of Arkansas, and provisions of the constitution of said State relating to railroad companies or pertinent to the issues in

240 this cause, may be given in evidence on the trial thereof, as if the same had been duly and formally proven and certified to the court according to the rules of law and said court.

F. E. WHITFIELD,
Sol for Pl'ff.

B. C. BROWN,
Sol. for Def'd't.

Memorandum of an Agreement made this day with the Southern Express Company and the Memphis and Little Rock Railroad.

LITTLE ROCK, ARK., *May* 26, 1871.

Railroad company to furnish end of baggage car for express service, when convenient, but privilege of substituting box-car reserved.

Express company to report monthly to the railroad company correct gross weights of all freights carried, and pay said railroad company upon the following basis:

Hopefield to Hunterville and beyond Du Vall's Bluff, and similar distances, per 100 pounds, 75 cents.

241 Hopefield to Du Vall's Bluff, and beyond Madison and similar distances, per 100 pounds, 60 cents.

Hopefield to Madison, similar distances and under, per 100 pounds, 40 cents.

Mineral water, ice, and fruit, above three divisions, 50c., 40c., 30c., per hundred pounds for respective distances.

Hopefield to Du Vall's Bluff, for White River freight only, per 100 pounds, 40 cents.

Railroad company will furnish front end of baggage car, or end next engine, coming west, for express service.

Express messenger will have the privilege of excluding all parties from his portion of said car, but no responsibility shall rest upon the railroad company for any violation of this rule.

The railroad company will furnish their freight laborers, when possible, to assist in handling express freight at Hopefield.

Express company assumes all risks for the transportation of express matter over said road, except such damage as may arise from gross neglect or carelessness of the said railroad company.

242 Express company to transport free of charge all matter for railroad company originating or terminating at any point on line of said railroad (Memphis and Little Rock included), the express company excepting "river risk" on ferry-boats.

On matter for said railroad company originating at, destined for points beyond above stipulation, the express company will charge said railroad company two-thirds of their regular rates for that portion of said service beyond the line of said railroad, as above stipulated; said matter to be transported on the customary conditions of said express company.

Safe and packing chest will be estimated at one hundred pounds daily, and reported accordingly. Messenger will be carried free on said railroad.

General officers of express company will be passed free, and route agent and other express employés will be carried free when on actual business for said express company, upon request of president or superintendent of express company.

243 This agreement takes effect June 1st, 1871, and may be terminated by either party on thirty days' notice.

In witness whereof, the parties have hereunto set their hands and seals the day and year above written at Little Rock, Ark.

MEMPHIS AND LITTLE ROCK R. R. CO.,
By A. S. LIVERMORE, *Gen'l Sup't.*
M. J. O'BRIEN,
Gen'l Superintendent Southern Express Company.

244 MEMPHIS, TENN., *January* 14, 1874.

M. J. O'BRIEN, Esq.,
General Superintendent So. Ex. Co., Memphis, Tenn.

DEAR SIR: In reply to yours of the 13th, will say that your figures are correct, and from and after February 1st, 1874, we will accept from this dopot to depot in Little Rock forty-seven and one-half cents per one hundred pounds on express business from points north and east of Louisville and Chattanooga for Little Rock and points beyond. On all other bnsiness, 75 cents per hundred pounds from this depot to depot in Little Rock. Local, same as heretofore. Of the above amounts, please report ten cents for transfer steamer, "H. C. Nutt," balance for the company.

Yours, truly, A. S. LIVERMORE,
Gen'l Sup't.

245 *Exhibit Basis of Tariff St. Louis, Iron Mountain and Southern Railway Company. Express, Money, and Freight Tariff.*

	Rate per $1,000 on money.	Rate per 100 lbs. on freight.
5 miles and under	$0 40	$0 30
Over 5 miles and not over 15 miles	50	40
" 15 " " 30 "	50	50
" 30 " " 50 "	50	60
" 50 " " 75 "	50	75
" 75 " " 100 "	60	90
" 100 " " 125 "	75	1 00
" 125 " " 175 "	75	1 25
" 175 " " 225 "	1 00	1 50
" 225 " " 275 "	1 00	1 75
" 275 " " 350 "	1 00	2 00
" 350 " " 400 "	1 25	2 25
" 400	1 25	2 50

Memphis and Little Rock Railroad Company. Express, Money, and Freight Tariff.

	Rate per $1,000 on money.	Rate per 100 lbs. on freight.
5 miles and under	$0 40	$0 30
Over 5 miles and not over 15 miles	50	40
246 Over 15 miles and not over 30 miles	50	50
Over 30 miles and not over 75 miles	50	60
" 50 " " 75 "	50	75
" 75 " " 100 "	60	90
" 100	75	1 00

To ascertain the through rate on freight between points on the St. L., I. M. & So. R'y and M. & L. R. R. compute the rate on each by above distance tariff, and the sum of the two local rates will be the through rate. Make the rate on currency 40c. per $1,000 where rate on freight is 30c. per 100 lbs.; 50c. per $1,000 where rate on freight is 40, 50, 60, or 75c. per 100 lbs.; 60c. per $1,000 where freight rate is 90c. per 100 lbs.; 75c. per $1,000 where freight rate is $1.00 or $1.25 per 100 lbs.; $1.00 per $1,000 where freight rate is $1.50, $1.75, or $2.00 for 100 lbs.; $1.25 per $1,000 where freight rate is $2.25 or $2.50 per 100 lbs. $1.50 per $1,000 where freight rate is $2.75 per 100 lbs. For rate on currency in amounts less than $1,000, and on freight in quantities less than 100 lbs., see classification sheet.

For through rates to Hot Springs add to your Malvern rate $1 per $1,000 on money, and $1 per 100 lbs. on freight.

247 Rate from Malvern to Hot Springs on butter, cheese, eggs, oysters, fish, meat, fruit, vegetables, beer in kegs, and ice, 75 cents per 100 lbs.

St. Louis, Iron Mountain & Southern Railway Company—Distance Card.

Distance from St. Louis.	Name.	Distance from St. Louis.	Name.
0	St. Louis, Mo.	70	Irondale.
5	Carondolet.	75	Bismarck.
10	Jefferson Barracks.	81	Iron Mountain.
21	Kimmswick.	83	Middlebrook.
23	Sulphur Springs.	86	Pilot Knob.
24	Glenwood.	88	Ironton.
25	Bushburg.	89	Arcadia.
26	Illinois.	97	Hogan.
27	Pevely.	104	Ozark.
30	Horine.	108	Annapolis.
32	Crystal.	116	Des Arc.
33	Bailey.	120	Gad's Hill.
36	Hematile.	127	Piedmont.
39	Victoria.	131	Clear Water.
42	De Soto.	134	Mills Springs.
47	Vineland.	145	Williamsville.
51	Blackwell.	148	Blum.
57	Cadet.	153	Hendrickson.
61	Mineral Point.	166	Poplar Bluff.
65	Potosi.	173	Harviell.
63	Summit.	180	Neeleyville.
248		186	Moark, Ark.
		192	Coming.
65	Hopewell.	195	Black River.

St. Louis, Iron Mountain & Southern Railway Co., &c.—Continued.

Distance from St. Louis.	Name.	Distance from St Louis.	Name.
198	Knobel.	343	L. R. & Ft. S. R. R.
203	Peach Orchard.	344	Baring Cross.
207	Delaplaine.	345	Little Rock.
249		355	Mablevale.
214	O'Kean.	358	Alexander.
220	Murta.	250	
225	Walnut Ridge.	362	Bryant.
232	Minturn.	368	Benton.
239	Alicia.	377	Traskwood.
244	Swifton.	384	Gifford.
252	Tuckerman.	388	Malvern.
256	Campbell.	399	Donaldson.
262	Newport.	405	Witherspoon.
270	Olyphant.	410	Arkadelphia.
273	Grande Glaise.	419	Curtis.
278	Bradford.	426	Gurdon.
283	Russell.	437	Boughton.
288	Bald Knob.	442	Prescott.
292	Judsonia.	449	Emmet.
296	Kensett.	457	Hope.
299	Higinson.	462	Guernsey.
305	Garner.	465	Shepperd.
312	Beebe.	470	Fulton.
320	Austin.	477	Homan.
323	Cabot.	483	Mandeville.
332	Jacksonville.	490	Texarkana.
338	McAlmont.		

Belmont Branch.

83	Loughborough, Mo.	133	Lutesville.
87	De Lassus.	139	Laflin.
95	Knob Lick.	145	Whitewater.
102	Mine La Matte.	147	Allenville.
104	Fredericktown.	153	Parker's.
111	Cornwall.	154	Caney Creek.
251		158	Sylvania.
118	Margrand.	162	Morley.
124	Bessville.	167	Blodgett.
130	Glen Allen.	173	Diehlstadt.
		178	Charleston.

St. Louis, Iron Mountain & Southern Railway Co., &c.—Continued.

Distance from St. Louis.	Name.	Distance from St. Louis.	Name.
183	Catalpa.	196	Belmont.
186	Henson.	197	Columbus, Ky.
190	Fugate.		

Cairo Branch.

Distance from Cairo.		Distance from Cairo.	
		252	
0	Cairo, Ills.	39	Gray's Ridge.
3	Birds' Point, Mo.	43	Essex.
10	Houghs.	49	Dexter.
15	Charleston.	56	Dudley.
20	Bertrand.	62	Paplin.
28	Likeston.	65	Ash Hill.
33	Little River.	74	Poplar Bluff.

Memphis & Lit. Rock R. R.

Distance from Little Rock.	Name.	Distance from Little Rock.	Name.
2	Argenta, Ark.	65	Brinkley.
10	Galloway.	70	Wheatley.
14	Kerr.	76	Goodwin.
18	Bayou Meto.	80	Palestine.
23	Lonoke.	90	Forrest City.
29	McCreanor's.	94	Madison.
32	Carlisle.	96	Widner's.
34	Prairie Center.	118	Edmonson.
41	Hazen.	123	Riceville.
48	Devall's Bluff.	125	Hulburt.
52	Surrounded Hill.	133	Hopefield.
60	Jones' Island.	135	Memphis, Tenn.

253 SOUTHERN EXPRESS COMPANY. Over St. Louis,

Classification for Packages

When freight per 100 lbs. is &c.	40	50	60	75	100	125	150	175	200	225	250	275	300	325	350	375	400	425	450	475	500
Pkgs. of—																					
1 lb. or less	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25
Pkgs. over—																					
1 lb. to 2 lbs.	25	25	25	25	25	25	25	25	25	30	30	30	30	30	30	30	30	30	30	30	30
2 " 3 "	25	25	25	25	25	25	25	30	30	35	35	35	35	40	45	45	45	45	45	45	45
3 " 4 "	25	25	25	25	25	30	30	35	35	40	40	45	45	55	55	55	55	60	60	60	60
4 " 5 "	25	25	25	25	25	30	35	35	40	50	50	50	50	60	60	60	60	70	70	70	70
5 " 7 "	25	25	25	25	30	35	35	40	45	50	55	55	55	60	65	65	75	75	75	75	75
7 " 10 "	25	25	25	30	30	40	45	45	50	55	60	60	65	65	70	70	75	80	90	90	90
10 " 15 "	25	25	30	30	35	45	50	50	55	60	65	65	75	75	80	80	85	90	100	100	110
15 " 20 "	25	25	30	30	40	45	50	50	60	70	75	80	90	90	100	100	100	110	125	125	125
20 " 25 "	25	25	30	35	45	50	55	65	70	80	90	90	100	100	110	120	125	135	140	150	150
25 " 30 "	25	25	30	40	50	55	60	75	80	90	100	105	110	125	135	140	150	160	160	175	175
30 " 35 "	30	30	35	40	50	60	65	80	90	100	115	120	130	140	145	160	160	175	175	200	200
35 " 40 "	30	30	40	40	50	65	75	90	100	110	125	135	150	150	165	175	175	200	200	225	225
40 " 45 "	30	35	40	45	60	70	80	95	115	125	140	150	160	165	185	190	200	225	225	250	250
45 " 50 "	30	40	45	50	70	75	90	105	125	135	150	165	175	190	200	210	225	250	250	275	275
50 " 55 "	35	45	45	55	70	80	95	115	130	145	165	185	190	210	225	240	250	275	275	300	300
55 " 60 "	35	45	50	60	75	90	105	125	140	155	175	200	200	225	240	250	275	290	300	325	325
60 " 65 "	35	45	55	65	80	95	115	135	150	165	190	215	215	235	255	275	290	300	325	350	350
65 " 70 "	35	50	60	70	90	100	125	150	160	175	200	225	225	250	275	290	300	325	350	375	375
70 " 75 "	40	50	60	75	100	110	135	155	165	190	215	235	240	260	285	310	325	350	375	400	400
75 " 80 "	40	50	60	75	100	125	145	165	175	200	225	250	250	275	300	325	350	375	390	425	425
80 " 85 "	40	50	60	75	100	125	150	175	200	225	250	275	275	285	315	340	375	400	415	450	450
85 " 90 "	40	50	60	75	100	125	150	175	200	225	250	275	300	300	325	350	400	425	450	475	475
90 " 95 "	40	50	60	75	100	125	150	175	200	225	250	275	300	325	350	375	400	425	450	475	500
95 " 100 "	40	50	60	75	100	125	150	175	200	225	250	275	300	325	350	375	400	425	450	475	500

INSTRUC

1. To arrive at the proper price to charge on freight destined for a point not herein named reached by another company, first ascertain the rate from your office to the end of our line, then the rate from transfer office to destination, and add the two together.

2. Charge for the return of C. O. D. collections of amounts under $50, regular currency rates. For amounts of $50 and over, add fifty per cent. to the regular currency rate.

3. When shippers desire to make prepayment on matter destined for points reached by other express companies, and you do not know the through rate, collect only to the end of the line of this company.

4. When receipting for matter destined for points beyond express lines, write in the body of the receipt as follows: "To be forwarded by express to ———— only."

5. All orders from shippers to deliver C. O. D. goods without collecting the C. O. D. bill, or to return the goods, must be endorsed by the agent at the office from whence the freight was shipped.

6. For places not indicated in the tariff, charge to the next designated point beyond.

7. For light and bulky freight—such as hat and bonnet cases, straw and millinery goods packed in trunks, and express matter, the weight of which is not in proportion to its bulk or the space it will occupy in transportation—charge by measurement, 6 cubic feet being equal to 100 lbs., *except to dealers exclusively in such goods*, then the charge may be once and a quarter regular tariff rates.

8. Perishable freight to be forwarded long distances *must be prepaid, or charges guaranteed by shippers.* The responsibility of the company is limited to fifty dollars, unless the value is otherwise stated in receipt.

9. Always ask *the value*, and, when stated, insert it in the receipt; and *when not given, write in the receipt:* "Asked, but not given."

10. *The rate to charge on value:* When the value of any C. O. D. or other freight package exceeds $50, add to the tariff rate as follows: Distances under 500 miles, charge one-eighth of one per cent.; over 500 and not exceeding 1,000 miles, one-quarter of one per cent.; over 1,000 and not exceeding 1,500 miles, one-half of one per cent. Mark the value on the package, and enter same on way-bill.

11. Corpses will be charged double first-class passenger fare, and freight must be prepaid.

12. Dogs (owner's risk) to be estimated at 250 pounds each, and charge regular tariff rates per

Iron Mountain and Southern Railway.

Weighing less than 100 *Lbs.*

550	600	650	700	750	800	850	900	950	1000	1050	1100	1150	1200	1300	1400	1500	1600	1700	1800	2000	2300	2500
25	25	25	25	25	25	25	25	25	25	25	25	25	25	30	30	35	35	35	35	40	40	40
30	30	30	30	30	30	30	30	30	30	30	30	30	30	35	35	40	40	45	45	50	50	50
45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	50	50	55	60	60	75	75
60	60	60	60	60	60	60	60	60	60	60	60	60	60	60	60	65	65	75	75	75	100	100
70	70	70	70	70	70	75	75	75	75	75	75	75	75	75	75	80	80	90	90	100	115	125
95	95	95	100	100	100	100	100	100	100	100	100	100	100	100	110	115	125	125	140	150	165	175
100	115	115	120	125	125	135	135	150	150	150	150	165	165	165	165	165	165	175	180	200	230	250
120	125	125	150	150	160	175	175	200	200	200	200	225	225	225	225	235	250	260	275	300	350	375
150	175	175	175	175	200	200	200	250	250	250	250	275	275	275	285	300	320	340	360	400	460	500
175	175	175	200	225	225	250	250	300	300	300	325	350	350	350	350	375	400	425	450	500	575	625
200	200	200	250	250	275	300	300	325	325	350	375	400	400	400	420	450	480	510	540	600	690	750
225	250	250	275	300	325	350	350	375	375	400	425	450	475	475	490	525	560	595	630	700	800	875
250	275	275	325	350	350	375	400	425	425	450	475	500	525	525	560	600	630	680	720	800	920	1000
275	300	300	350	375	400	425	450	475	475	500	525	550	575	585	630	675	720	765	810	900	1035	1125
300	325	325	375	400	425	450	475	500	525	550	575	600	625	650	700	750	800	850	900	1000	1150	1250

325	350	375	400	450	475	500	525	550	575	625	650	675	700	Charge at the 100-pound rate.								
350	375	400	425	475	500	525	550	600	625	650	675	700	725	"			"			"		
400	425	450	475	525	550	575	625	650	675	725	750	775	825	"			"			"		
415	450	475	525	550	575	625	650	675	725	750	800	825	850	"			"			"		
445	475	525	575	600	625	675	700	750	775	825	850	875	925	"			"			"		
460	500	550	600	625	650	700	750	800	825	850	900	950	975	"			"			"		
475	525	575	650	675	700	750	800	850	875	900	950	1000	1025	"			"			"		
500	550	625	675	700	750	800	850	900	900	950	1000	1050	1100	"			"			"		
550	600	650	700	750	800	850	900	950	950	1000	1050	1100	1150	"			"			"		
550	600	650	700	750	800	850	900	950	1000	1050	1100	1150	1200	"			"			"		

TIONS.

100 lbs., but never less than $2.50 each, however short the distance carried may be. Other live stock will be charged *once and a half regular rates, at shipper's risk.*

13. Looking-glasses, plate glass, paintings, pictures, and show cases will be charged three times the regular tariff rates.

14. All freight must be in good condition and plainly marked in ink.

15. Agents will note condition of freight when received.

16. Transfer agents must examine condition of freight in transit, and hold over and repair such as may be in bad order. When in bad order, open the packages, make an invoice of contents, and enter same, with address of packages, etc., in a book to be kept for that purpose. Neglect to observe this rule renders agents liable for missing articles.

17. When freight is diverted from its regular route by damage to railroad, additional charge will be made to meet the increased cost of transportation.

18. If senders of C. O. D. goods desire to have "return charges" collected, they must be required to insert the amount of same as an item in their bill, and the total amount must be marked on the package and C. O. D. envelope, and entered on way-bill.

19. Agents will not permit packages C. O. D. to be opened or contents examined, or deliver the same or any part thereof, until the full amount of the C. O. D. bill is paid, or forward such matter beyond original destination, unless with written permission of consignor, through shipping office.

20. Agents at destination are required to make the charges on way-bills conform to the tariff by increasing or deducting, as circumstances may require, and in no case make a lower rate than the tariff authorizes.

21. Weigh all packages of two pounds and upwards, marking the weight on the package, and enter same on the way-bill.

22. This company will not be responsible for loss or damages arising from fire, river or sea navigation, *unless specially insured by it*, and so specified in receipt.

The company reserves for itself the right to collect an additional charge to meet special taxation imposed by legislative and municipal bodies.

Follow closely all printed instructions on C. O. D. envelopes.

254 SOUTHERN EX-

Over Saint Louis, Iron Moun-

Classification for Amounts of Currency, Col-

When currency per $1,000 is	25	30	50	60	75	100	125	150	175	200	225	250	275	300	325	350
Collect on p'k'gs of $25 and under...	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25
Do do over 25 to $50.....	25	25	25	25	25	25	25	25	25	40	40	50	50	50	50	50
Do do 50 to 100.....	25	25	25	25	30	30	40	50	50	60	75	75	75	90	90	100
Do do 100 to 200.....	25	25	30	30	40	40	50	60	75	75	90	100	100	100	125	125
Do do 200 to 300.....	25	25	40	40	50	50	60	75	90	100	100	120	125	150	150	150
Do do 300 to 400.....	25	25	40	40	50	60	75	90	110	120	125	150	150	175	175	200
Do do 400 to 500.....	25	25	50	50	50	75	90	100	125	140	150	175	175	200	200	225
Do do 500 to 600.....	25	30	50	50	60	80	90	120	140	150	160	175	200	220	225	250
Do do 600 to 700.....	25	30	50	60	75	90	100	140	150	175	190	200	225	250	250	275
Do do 700 to 800.....	25	30	50	60	75	100	125	150	160	175	200	225	250	275	275	300
Do do 800 to 900.....	25	30	50	60	75	100	125	150	175	200	225	250	275	300	300	325
Do do 900 to 1,000.....	25	30	50	60	75	100	125	150	175	200	225	250	275	300	325	350

Request shippers to direct and securely seal their money packages with wax, using their own seal. Always give receipts in ink for money packages and bonds, writing out in full in the body thereof

INSTRUC-

Charge for currency insured, fifty per cent. in addition to the regular rate. Example: To find the insured rate on $200, when the regular rate is $2.50, (or class 10,) per $1,000. In the column of the classification under $2.50 per 1,000 you will find the regular rate on $200 is $1.00, to this add 50 per cent., making the amount $1.50 as the insured rate.

Charge on gold, one and one-half currency rates; (payable in kind or its equivalent). Example: (To find the gold rate on sums of less than $1,000,) when the currency rate between any two points is $4.00 (class 16) per 1,000, the currency rate on $100 would be $1.00, to this amount add 50 per cent., making $1.50 in gold, as the proper charge on $100 in gold.

Silver, double currency rates, payable in kind.

Charge for the return of C. O. D. collections of amounts under $50, currency rates; for amounts of $500 and over, add 50 per cent. to the currency rate. (See example of method of arriving at charges on insured currency.)

Charge for collecting unendorsed and unaccepted drafts and accounts, one and one-half currency rates. If returned uncollected, charge 25 cents.

Charge for collecting notes, endorsed or accepted drafts, deeds, coupons, etc., double the currency rate, and when returned unpaid, the currency rate in addition to any expense for protest.

When money rates are asked for, give shippers first the rate covering insurance. It is believed that when the advantages of the insured rate are explained, shippers will prefer to accept it.

PRESS COMPANY.

tain and Southern Railway.

lections, Gold and Silver, less than $1,000.

375	400	425	450	475	500	525	550	575	600	625	650	675	700	750
50	50	50	50	50	50	50	50	50	50	50	50	50	50	75
90	90	75	75	75	75	75	90	90	100	100	100	100	100	100
100	110	125	125	125	125	125	150	150	150	150	150	150	150	150
150	150	150	150	150	150	150	175	175	175	200	200	200	200	200
175	175	200	200	210	225	225	250	250	250	275	275	300	300	300
200	225	225	250	250	275	275	300	300	325	325	350	350	350	350
250	250	275	275	300	325	325	350	350	375	375	400	400	425	425
200	275	300	310	325	350	360	375	400	400	425	450	450	475	500
300	325	325	350	375	400	400	425	450	475	475	500	525	550	575
325	350	375	400	425	425	450	475	500	525	550	550	575	600	650
350	375	400	425	450	475	500	525	550	575	600	600	625	650	700
375	400	425	450	475	500	525	550	575	600	625	650	675	700	750

Special rates for small currency and gold coin remittances between points where said rates do not exceed the rates for like sums in the adjoining classification.

These special rates are not to apply to the proceeds of collections.

Charge on sums of $20 and under..... 15 cts.
Charge on sums over $20 to $40, inclusive..... 20 "
Charge on sums over $40 to $50, inclusive..... 25 "
Charge on sums over $50 to $70, inclusive..... 40 "
Charge on sums over $70 to $100, inclusive..... 50 "
Charge on sums over $100 to $150, inclusive..... 75 "

when practicable, and to declare contents and value on the wrapper.
the amount contained.

TIONS.

For places not indicated in this tariff, charge to the next designated point beyond.

Require shippers to securely seal their money packages with wax, using their own seal, and in all cases to declare contents and value on the wrapper.

Always give receipts for money parcels and bonds, writing out in full, in the body thereof, the amount contained.

Follow closely all printed and written instructions on F. C. envelopes.

The rules of this company require that all bonds and other papers of value, sent in its charge, shall be valued in currency by the shipper, the amount to be marked on the package and entered in the receipt, and the charges for transportation will be the same as for currency. Shipper should be requested to keep a record of the numbers, etc., to aid in their recovery in case of loss.

Letters of no value, enclosed in Government stamped envelopes, for any points reached by the Adams, American, United States, or Texas Express Companies, may be way-billed and forwarded by express, when prepaid 25 cents each, this amount to be equally divided between the companies performing the service.

In re-billing to offices of the Adams Express Company letters originating at local offices of this company, agents will allow full amount prepaid (25c.) in prepaid column, and make paid through transportation voucher for the same.

On shipments of $10,000 and over, see special tariff.

255 Which opinion of the circuit judge in the case is as follows:

Circuit Court United States, Eastern District of Arkansas. July Term, 1881.

THE SOUTHERN EXPRESS COMPANY
vs.
THE MEMPHIS & LITTLE ROCK R. R. Co. } Equity.

The complainant, an express company, has been engaged for many years in carrying on an express business over the respondent's railroad. No written contract was ever entered into between the parties; but the business was carried on without objection, and upon terms mutually satisfactory until some time in the year 1880, when the railroad company asserted its own right to transact all the express business upon its line, and attempted to eject the complainant therefrom. Upon the application of complainant, and upon the allegations contained in the original bill, a temporary injunction was on the 21st of June, 1880, granted by the district judge,
256 restraining the respondent from interfering with the complainant, &c., and from preventing the complainant from carrying on the express business over said road, and from enjoying the same facilities in the conduct of such business permitted to any other express company, or exercised by the respondent itself, on payment by complainant of reasonable compensation therefor.

On the 12th day of May, 1881, the complainant filed a supplemental bill by which it is alleged that respondent has engaged in the express business over its said line of railroad, and established offices, agents, wagons, horses, &c. That the complainant has also continued in said business.

It is further averred that since the granting of the injunction herein, the respondent has continuously resorted to unlawful, unjust, arbitrary, and unreasonable expedients to circumvent the force and effect of the orders and decrees of this court on the original bill as aforesaid, and by imposition upon the plaintiff of unlawful,
257 unreasonable, unjust, and discriminating terms, conditions, and restrictions not imposed upon itself, engaged in the express business, to destroy the plaintiff's business and competition on the defendant's road, and to accomplish indirectly that exclusion forbidden by the order of this court in this cause.

The supplemental bill sets forth in detail the terms and restrictions imposed upon the complainant, the principal of which is, that the complainant is charged unjust and extortionate rates for the transportation of express matter. The prayer of the supplemental bill is that the injunction granted under the original bill may be modified so as to restrain the respondent from charging complainant upon its bags, safes, packing-trunks, chests, and boxes, a higher rate than upon other freights of like weight and bulk, and from charging complainant upon other freights a higher rate than it charges for similar express matter received or delivered to the custody of the Iron Mountain & Southern Railroad Company

258 express, or the Pacific Express Company. Also from discriminating against the complainant in favor of itself or any other express company or person in the matter of rates, &c.

Upon the presentation of the supplemental bill, the respondent moved to dissolve the injunction allowed upon the original bill, and the complainant moved for a modification of the injunction as prayed in the supplemental bill, and both motions were, by consent, set down for hearing before the circuit judge at St. Louis, on Saturday, the 4th day of June, 1881, and were fully argued by counsel before him.

F. E. Whitfield & Glover & Shepley, for complainant.
B. C. Brown & J. O. Broadhead, for respondent.

McCRARY, *Circuit Judge*:

259 I will consider first the motion to dissolve the injunction. That is urged upon two grounds, to wit:

First. That the railroad company by its charter possessed of the exclusive privilege of conducting the express business over and upon its own road, and second, that even if this were not so, the express company has no right to carry on its business upon said road without the consent of the railroad company.

Does the charter of the respondent railroad company confer upon it the exclusive right to carry on the express business upon its own road? The answer to this question depends upon the construction of the sixth section of said charter, which provides as follows:

The said company shall have the exclusive right of transportation or conveyance of persons, goods, merchandise, or produce over railroad by them to be constructed.

This language must be construed in the light of the history of the construction of railroads in this country. When first
260 introduced they were regarded as improved highways only, subject to be used by the general public. It was thought that any persons ought to have the right to place his vehicle upon the track of a railroad, and to transport his own freight upon it, upon paying toll for the use of the track, and it was considered necessary, in order to limit the use of the road and to give a particular person or company the exclusive right to operate it, that such exclusive right should be expressly reserved by law; and it was for this purpose that clauses substantially like the one above quoted were inserted in very many of the earlier and not a few of the later railroad charters. Experience very soon demonstated that it was not practicable to apply to the system of railways all the principles that obtained in defining and regulating the rights of the public with respect to the common highway; certain innovations were necessary; certain exclusive privileges were inevitable in order to secure safety and celerity in the transportation of persons and
261 property by the use of cars and steam engines. One of the first of these to be generally recognized was the necessity that the operation of every railroad should be under the control of a single head. It was seen that the safety, not only of property, but

of life as well, depended upon vesting in the owner of the tract, or the company operating the road, the exclusive right to say what vehicles should be placed upon the track, or, in other words, the exclusive right of transportation and conveyance of persons and property over their tracts. An examination of the various railroad charters adopted by the various legislatures of the Union, will show that this provision has been inserted in nearly all of them in one form or another. It was never intended to apply to or determine such a question as that now under consideration. It gives the railroad company the exclusive right to place cars on the track and operate them for the transportation of persons, goods, wares, and merchandise.

262 It gives no other or greater exclusive rights. It follows that the question, whether the railroad company has the exclusive right to carry on the express business upon its line, and the right to eject the complainant, must be determined independenly of this provision.

This brings us to the question whether the express company, as a matter of right, carry on its business upon the respondent's road. Substantially this question has recently been considered by several of the States courts of the United States, and it has uniformly held that it is the duty of the courts to maintain such right by granting a preliminary injunction, at least until there can be a final hearing upon the merits. Such has been the ruling of Mr. Justice Harlan on the circuit; of Judge Baxter, of the sixth circuit, and of District Judges Key, Gresham, Treat, Hallet, and Caldwell.

I am of the opinion that these decisions are sound in principle as well as of great weight as authority. They will be fol-
263 lowed unless the Supreme Court shall otherwise decide. The guiding principles running through them all, and which should govern in determining the respective rights of the parties, are these:

First. A railroad company is a *quasi* public corporation, and bound by the laws regulating the powers and duties of common carriers of persons and property.

Second. It is the duty of such a company, as a public servant, to receive and carry goods for all persons alike, without injurious discrimination as to rates or terms.

Third. The business of expressage has grown into a public necessity. It is the means whereby articles of great value may be carried over long distances with certainty, safety, and celerity, being placed in the hands of a special messenger, who is to have the charge and care of them *en route*. The railroad companies must, in common with the public, recognize the necessity for this mode of transportation, and must carry express packages, and a messenger in
264 charge of them, for all express companies that apply, on the same terms, unless excused by the fact that so many apply that it is impossible to accommodate all—a state of things not likely to occur. If it be said that this is giving to the express companies privileges not afforded to other shippers, the answer is, that the nature of the express business makes special facilities for

it transportation necessary, and the case is therefore properly exceptional.

Fourth. It is not necessary now to determine whether the respondent railroad company may under its charter engage in the express business and undertake to carry and deliver packages beyond its line. It is enough for the present to say that if it possesses the right to engage in the business at all, it must do so upon terms of perfect equality with all other express companies; and the court will see that it does not take to itself any privileges in this regard that it does not extend to the complainant.

The motion to dissolve the injunction is overruled.

265 Second. What has been said virtually disposes of the questions raised by the supplemental bill. The railroad company is bound to carry for the express company for a reasonable compensation, and must not discriminate against it. A court of clemency has power to decree a compliance with this wholesome regulation. This court cannot for a moment sanction the proposition that the railroad company may by extortion or unjust discrimination exclude the express company from the right to conduct its business upon the railroad. I am not prepared now to fix the maximum rates to be charged for the transportation of express matter, but I have no doubt of the power of the court, after investigation, to do so. An order for this purpose should not, as a rule, be made until after a reference to a master and a report by him after a hearing.

For the present the injunction herein before allowed will
266 be modified so as to enjoin and restrain the respondent from charging the complainant for the transportation of express matter, including closed packages, more than a fair and reasonable rate; such charges in no case to exceed the rate charged on similar express matter to itself or to any other express company, or for similar express matter received from or delivered to the Iron Mountain & Southern Railroad Company express, or the Pacific Express Company.

Ordered accordingly.

267 United States of America, Eastern District of Arkansas.

Be it remembered, that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 23d day of October, anno Domini one thousand eight hundred and eighty-two, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on February 27, 1883:

THE SOUTHERN EXPRESS COMPANY
v.
THE MEMPHIS AND LITTLE ROCK RAILROD COMPANY, as reorganized. } 381.

On this day came the plaintiff, by U. M. & G. B. Rose, Esq's, its solicitors, and also came the defendant, by B. C. Brown, Esq., its

solicitor, and it appearing that the depositions of James G. Fargo, James M. Thompson, W. J. O'Brien, and Clarence A. Seward, witnesses on the part of the plaintiff, have not been properly filed in this cause, it is now, by consent of parties, ordered that said depositions be and the same are now filed and made a part of the
268 record in this cause, and it is ordered that this order have effect now for them as of a date prior to the closing of proofs herein, and the submission of this cause; which depositions are as follows:

The Plaintiff's Testimony.

THE SOUTHERN EXPRESS CO.
v.
THE MEMPHIS AND LITTLE ROCK RAILROAD COMPANY (as reorganized).

JAMES G. FARGO testified that he (witness) is general superintendent of the American Express Co., and a director in two other express companies. The facilities afforded to express companies by railroads are every facility necessary to quick transportation and proper handling of express matter, conveniences at stations, allowing the express messengers to travel in the
269 cars with their express matter, proper time for loading and unloading, &c. Every prominent line of railway in the United States afford these facilities to some form of express organization. There are hundreds of express companies now in operation, and their business includes much more than the mere carrying of property from one town to another. They are provided with horses and wagons, with which they collect and deliver. They execute orders for purchase or sale at a distance, carrying or returning the money price, as the case may be. They carry goods from the vendor to the vendee, collecting the price, or returning the goods if not paid for. They collect bills, notes, and accounts, protesting for non-payment in proper cases. They carry live stock and fish, especially animals of great value, or requiring special attention in transportation. They give through receipts for express matter, receiving it at the shipper's home or place of business, and superin-
270 tending it to the possession of the consignee without the personal presence of the owner to get it to the railroads, and attend to the re-shipment of it on the several railroads over which it must go; and they provide iron safes and attending messengers in charge of them to secure safety and despatch in the transmission of money, bonds, and valuable securities. The average amount paid to railroads for transportation by the express company with which he (witness) is connected is about 40 per cent. of the earnings of the express co. on the several roads.

JAMES M. THOMPSON testified that he is familiar with the commencement and earliest history of the express business in the United States. Witness engaged in the express business in the year 1840. He gives the names of a number of the earliest express organizations, and says that at that time railroads and steamboats not only

did not refuse, but were anxious to extend all facilities to
271 express companies. The business has increased wonderfully since, and the capital now invested in express companies is about forty million dollars. Express messengers generally ride on the car with the baggage master, and within the witnesses knowledge their presence there has never been complained of by the railroad companies.

M. J. O'BRIEN testified: The Southern Express Company, a corporation which has its chief office at Augusta, Georgia, conducts its business in the southern States, embracing North and South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Tennessee, Arkansas, and portions of Virginia, Kentucky, Missouri, and Illinois; does business over about ten thousand miles of railway; employs between twelve and fifteen hundred operators. It connects with the Adams, American, and the Texas Express Companies, and receives, in
272 the months from September 1st to June 1st, from the Adams Express Co. alone, exclusive of Government money, from twelve to fifteen million dollars per month to be transported, the most of which is interstate business. It has carried as much as ten million dollars at one time. To the witnesses knowledge it has been, ever since the year 1855, the habit, custom, and usage of the railroad companies of the United States to give facilities for the conduct of the express business. Since his connection with the Southern Express Co. its business has extended to the transportation of fruits, vegetables, and other perishable matter. Foreseeing the value and capacity for development of this business in the South, the Southern Express Company adopted appliances specially planned for it, and has spared neither labor or expense to develop it. The Southern Express Company pays the railroads over which it operates an average sum of about 33 cents per 100 lbs. per 100 miles for the transportation of its matter, in the custody of its messengers, including the fare of the messengers.

273 CLARENCE A. SEWARD testified: That to his knowledge the Southern Express Co. had assets to the amount of one and one-half or two million dollars, against which there are no debts.

Endorsed: Filed under special order of court Feb'y 27, 1883. Ralph L. Goodrich, clerk.

274 UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

I, Ralph L. Goodrich, clerk of the court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this cirtificate are true, correct, and compared copies of the originals remaining of record in my office, and constitute a complete transcript of all the record entries and papers on file in my office in the above entitled cause. In witness whereof, I have hereunto set my hand and the seal of said court, this 21st day of April in the year of our Lord one thousand eight hun-

dred and eighty-three, and of the Independence of the United States of America the one hundred and seventh.

[SEAL] RALPH L. GOODRICH, *Clerk.*

[Endorsed:] Supreme Court U. S., 1882, October term. No. 238. The Memphis & Little Rock Railroad Company (as reorganized), appellant, *vs.* The Southern Express Company. Writ of *Certiorari* & return. Filed 27th April, 1883.

Endorsed on cover: E. Arkansas C. C. U. S. No. 238. The Memphis & Little Rock Railroad Company (as reorganized), appellant, *vs.* The Southern Express Company. Filed 14th July, 1882.

1976